

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court
DAR-_____
Appeals Court Case No. 2025-P-0951

Crown Communities, LLC,
Plaintiff-Appellant

v.

Phillip Austin, Trustee of the Charles W. Austin
Trust & Pocasset Park Association, Inc.,

Defendant-Appellees

On Appeal from the Superior Court
Department, Barnstable County

Application for Direct Appellate Review

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REQUEST FOR DIRECT APPELLATE REVIEW

Appellant Crown Communities LLC ("Crown") respectfully asks this Court to grant direct appellate review of this appeal pursuant to Mass. R. App. P. 11. This matter presents issues of first impression regarding the statutory right of first refusal under G. L. c. 140, § 32R of the Manufactured Housing Act (the "Act") and important questions of public interest in how the Act is administered and enforced. The Act governs transactions to purchase manufactured housing communities. It provides certain community residents with a conditional right of first refusal when the owner of the community agrees to sell it to an outside buyer. This appeal and underlying litigation here raise virtually every issue that is likely to arise in future litigations concerning what the Act means, how community residents need to comply with the Act, and how trial courts should adjudicate disputes arising under the Act. These questions strike at the core of property rights, the integrity of contracts, and the responsibility of trial courts to uphold the evidentiary standards upon which our legal system relies.

This is now the second appeal from the trial court's judgment in this case, making direct appellate review

even more appropriate. If the questions raised by that judgment are left unresolved by this Court, the judiciary's essential function as the gatekeeper of reliable evidence could be undermined and non-compliant buyers will have an opportunity to game the system. Accordingly, Crown asks this Court to settle these issues now, once and for all.

STATEMENT OF PRIOR PROCEEDINGS¹

This application for direct appellate review is before this Court on appeal from the Amended Findings of Fact, Rulings of Law, and Order on Remand by the Superior Court Department in Barnstable County.

On February 20, 2020, Crown filed a verified complaint against Phillip Austin, as Trustee of The Charles W. Austin Trust (the "Trust") and the Pocasset Park Association, Inc. (the "HOA")² in Superior Court in Barnstable County. Crown asserted claims for: (1) breach of contract by the Trust (Count I); (2) declaratory relief pursuant to G. L. c. 231A against the Trust and the HOA (Count II); and (3) detrimental reliance against

¹ A copy of the docket entries for the lower court and Appeals Court proceedings are appended hereto. See Addendum ("Add.") 36, 51.

² The Pocasset Park Association is a homeowner's association incorporated under the laws of Massachusetts.

the Trust (Count III). Add. 62. Crown also moved, ex parte, for a memorandum of *lis pendens*, which was allowed by the Superior Court on February 20, 2020. Add. 39.

On March 24, 2020, the Trust answered Crown's complaint and brought a counterclaim and cross-claim, seeking declaratory judgment as to (1) whether the HOA validly exercised its right of first refusal pursuant to G. L. c. 140, § 32R, and (2) having executed a purchase and sale agreement with Crown and another with the HOA, which one of the two agreements was valid. Add. 40, 81.

On April 7, 2020, the HOA filed an Answer and Verified Counterclaim and Cross-claim asserting that it had lawfully exercised its right of first refusal to purchase the Park in compliance with G. L. c. 140, §32R (Count I). Add. 40. On December 9, 2020 and on March 28, 2022, the HOA amended its counterclaim and crossclaim, alleging that (1) the Trust unreasonably delayed the HOA's ability to close on the purchase and sale of the Park in violation of §32R (Count II); (2) Crown tortiously interfered with the HOA's contract to purchase the Park (Count III); (3) Crown engaged in unfair and deceptive practices in violation of G. L. c. 93A (Count IV); and (4) Crown violated the Massachusetts

Civil Rights Act, G. L. c. 12, §11H-11I ("the MCRA") (Count V). Add. 41, 44, 63.

On April 19, 2021, Crown moved for summary judgment. Add. 42. Crown argued that prior to the HOA executing its purchase and sale agreement with the Trust, the HOA had failed to request information about any proposals to purchase the Park, as required under G. L. c. 140, §32R, and that failure waived any right of first refusal that the HOA might have had. Add. 56. The Trust joined in Crown's motion and filed a cross-motion alleging that the HOA was unable to secure the necessary financing pursuant to §32R. Add. 59. On June 3, 2021, the trial court denied both motions. Add. 42.

In August 2022, the trial court held a five-day, jury waived trial that included testimony from fifteen witnesses, the introduction of forty-three exhibits, and a view of the Park. Add. 46, 63. On December 28, 2022, the trial court issued its fifteen-page Findings of Facts, Rulings of Law, and Order for Judgment. Add. 62. The trial court ruled that: (1) the HOA did not lawfully exercise a statutory right of first refusal pursuant to G. L. c. 140, §32R; (2) the Crown Purchase and Sale Agreement ("Crown P&S") was valid and enforceable; (3) the HOA's Purchase and Sale Agreement ("HOA P&S") was

not valid and enforceable; (4) the Trust was obligated to sell the Park to Crown and not to the HOA; and (5) the Trust did not unreasonably delay the ability of the HOA to close on the HOA P&S. Add. 75-76.

The trial court also ruled that (1) Crown did not tortiously interfere with the HOA's contract to purchase the Park; (2) Crown did not engage in unfair or deceptive acts in violation of G. L. c. 93A; (3) Crown did not violate the MCRA; and (4) Crown's claims for breach of contract and detrimental reliance against the Trust were moot. Add. 76.

On January 11, 2023, final judgment entered in favor of Crown, and against the HOA. Add. 47-48. On February 16, 2023, the HOA moved to alter or amend the judgment under Mass. R. Civ. P. 59(e). Add. 48. On March 10, 2023, the trial court denied the motion, concluding that "the evidence at trial was insufficient to show that the HOA satisfied [the requirements set forth in §32R(c)]." Add. 48. The trial court found that the HOA had failed to provide "reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community had approved the [Association's proposed] purchase of the community." Add. 78. The HOA submitted a membership list as proof that it represented

at least 51% of the resident-owners. Add. 78. The trial court rejected that evidence because the list was dated February 28, 2020. Id. Therefore, it was not probative of whether the HOA represented at least 51% of the resident-owners nearly two months earlier, on January 2, 2020, when the HOA purported to exercise its right of first refusal. Id. On March 28, 2023, the HOA filed its Notice of Appeal. Add. 48.

On March 27, 2024, the Attorney General submitted to the Appeals Court, on her own initiative, an amicus letter. Add. 52, 211. The Attorney General contended that this case presents a question of first impression as to what constituted "reasonable evidence" to meet the fifty-one percent threshold under G. L. c. 140, §32R(c) and proffered her interpretation that all that was required was a signature on a document, pointing to 940 CMR 10.09. Add. 211. On April 16, 2024, Crown moved for leave to respond to the Attorney General's letter, which was denied by the Appeals Court. Add. 52-53.

On December 3, 2024, the Appeals Court affirmed the trial court's judgment in Crown's favor on the MCRA counterclaim, vacated the judgment on all other counts, and remanded to the trial court for further consideration. Add. 99. In vacating the judgment with

respect to whether the HOA validly exercised a right of first refusal, the Appeals Court reasoned, in part, that the Attorney General's interpretation of what constituted reasonable evidence of consent under G. L. c. 140, § 32R was entitled to deference. Add. 91-92.

On March 27, 2025, based on the ruling from the Appeals Court but without taking further evidence or otherwise reopening the record, the trial court issued Amended Findings of Fact, Rulings of Law, and Order on Remand, ruling that: (1) the HOA lawfully exercised a statutory right of first refusal pursuant to G. L. c. 140, §32R; (2) the HOA P&S was valid and enforceable; (3) the Crown P&S was not valid and enforceable; (4) the Trust was obligated to sell the Park to the HOA and not to Crown; and (5) the Trust did not unreasonably delay the ability of the HOA to close on the HOA P&S. Add. 118-119.

The trial court also affirmed its prior rulings that (1) Crown did not tortiously interfere with the HOA's contract to purchase the Park; (2) Crown did not engage in unfair or deceptive acts in violation of G. L. c. 93A; and (3) Crown did not violate the MCRA. Add. 119. It further held that Crown's claims for breach of

contract and detrimental reliance against the Trust were moot. Add. 120.

STATEMENT OF FACTS

This case involves the prospective sale of a manufactured housing community commonly referred to as "The Park at Pocasset" ("Park") in Pocasset, Massachusetts, to Crown, a Wyoming limited liability company registered to do business in Massachusetts. Add. 63. Crown is in the business of acquiring and managing manufactured housing communities throughout the United States. The HOA is an organization incorporated in Massachusetts and purports to represent some of the Park's resident-owners in seeking to purchase the Park. Add. 66-67, 108.

The Park is owned and operated by the Trust. Add. 84. The Trust owns the land on which the Park is situated and leases space to the owners of the manufactured housing units. Add. 136. Philip Austin, as trustee and manager of the Park, collects rents, enforces Park rules, and oversees repairs and maintenance for the Park. Add. 84. In recent years, the Park has fallen into some level of disrepair. Add. 63-64. In 2018, the Park went into a court-ordered receivership for a failed septic system. Add. 63. Since then, the Trust has wanted

to sell the property which houses the Park. Add. 135-136. The Trust's desire to sell had been widely known throughout the industry. 140.

At all relevant times, the Park consisted of eighty-one occupied homes, some of which are occupied by resident owners, others by tenants, and others by subtenants or guest residents. Add. 67, 106. In or around the fall of 2019, Alexander Cabot, Crown's President, learned that the Park was for sale. Add. 123-124. On November 15, 2019, Crown and the Trust executed a purchase and sale agreement for Crown to buy the Park for \$3,800,000 in cash, subject to the right of first refusal set forth in G. L. c. 140, §32R. Add. 64, 107. On November 20, 2019, pursuant to a provision in the Crown P&S, the Trust notified residents via certified mail that it intended to sell the Park to Crown. Add. 164. The Trust enclosed a copy of the Crown P&S with its notice. Add. 167. The Trust also informed the residents of the right of first refusal under G. L. c. 140, §32R. Add. 165.

Prior to that time, no entity, organization, or group of residents had notified the Trust that they desired to receive information about any proposed sale of the Park pursuant to G. L. c. 140, §32R(b). Add. 64.

In December 2019, after the Trust notified residents of the Crown P&S, certain residents began discussing the sale of the Park and considering the option of buying it themselves. Add. 65, 85, 107. Some residents, including one Justine Shorey, connected with the Cooperative Development Institute ("CDI"), which purports to assist manufactured housing community residents in purchasing and operating their communities as cooperatives. Add. 65, 107. In mid-December 2019, CDI held several meetings with residents and gave them flyers, letters, and other packets of information. Add. 65, 107.

CDI representatives Andrew Danforth and Nora Gosselin helped residents form the HOA and gave residents blank copies of a "Petition of Residents to Invoke the Right of First Refusal" (the "Petition"). Add. 66. Certain residents circulated the Petition among the community and were "modestly aggressive" in asking people to sign it. Add. 65, 86. Some individuals signed the Petition at meetings, and some other individuals signed when visited by HOA members at their homes. Add. 107, 143-144. Nowhere on the Petition does it indicate if a signer is a resident, owner, tenant, subtenant, or guest, and the persons gathering signatures made no

effort to verify whether the signatories were owners or simply subtenants or guests at the Park. Add. 65, 108. See also Add. 184-189.

CDI was not involved in collecting signatures. Add. 156. Neither Danforth nor Gosselin could verify that the signatures on the Petition were genuine or that the signatories were actually residents or owners. Add. 146-149, 159-160. Danforth testified that the form petition had been modified throughout the years in response to various litigations.³ Add. 161-162.

CDI also assisted the residents in securing financing and referred them to Resident Ownership Capital d/b/a ROC USA Capital ("ROC"). Add. 108. ROC is affiliated with CDI and provides financing to manufactured housing owners seeking to purchase parks. Add. 65, 85, 108.

On December 23, 2019, the HOA was incorporated as a Massachusetts non-profit organization and elected Board members. Add. 66, 170. Shorey served as President of the HOA. On December 30, 2019, as President of the HOA, Shorey executed a purchase and sale agreement with

³ The Petition was subsequently modified to include a question regarding whether the signer was a resident or owner.

the Trust for the purchase of the Park for \$3,800,000, subject to a mortgage contingency. Add. 66. On January 2, 2020, Attorney Philip Lombardo notified the Trust that the residents of the Park, through their newly formed HOA, were exercising their statutory right of first refusal to purchase the Park. Add. 178.

Lombardo included several attachments with his letter to the Trust, including a copy of the HOA's Articles of Organization dated December 23, 2019, listing the officers of the newly formed corporation, and the HOA P&S. *Id.* While the HOA P&S appeared to be similar to the Crown P&S, there was one significant difference – the HOA P&S included a mortgage contingency whereas the Crown P&S was an all-cash deal. Add. 66. Lombardo also attached copies of pages of the Petition, which included purported signatures. Add. 184-189. Attorney Lombardo did not include any affidavit attesting to the validity of the signatures on the Petition or verifying any signatory's status as a resident or owner. *See* Add. 178. Nor did Lombardo provide any other evidence that a majority of resident-owners in the Park approved the HOA P&S or even knew of its terms. Add. *See id.*

Philip Austin, as Trustee, questioned the integrity of the Petition and the validity of the signatures. See Add. 109. He sought advice from the Trust's attorney, who advised him to sign the HOA P&S. Id. On January 7, 2020, on the advice of counsel, Austin signed the HOA P&S on behalf of the Trust. Id.

After the HOA P&S was executed, some residents contacted Crown to inquire about the contemplated sale of the Park. Add. 130-131. The residents seemed confused about Crown's intentions and goals. Add. 131, 134.

With the Trust's permission, Crown sent representatives to the Park to discuss the residents' concerns and to clear up any confusion. Add. 133. On January 31, 2020, Crown held a meeting for residents at which it discussed its goals and intentions for the Park, made clear that it intended to continue operating the Park as a manufactured housing community, and highlighted its experience in successfully managing such communities. Add. 132. Crown also sent several letters to residents explaining its vision for the community and suggesting issues to consider before committing to a resident-owned cooperative. Add. 68, 109. Having learned that certain residents had felt pressured to sign the Petition or did not understand the significance of the

Petition, Crown provided withdrawal forms to residents who wished to withdraw their support from the Petition. Add. 109, 134-135. At least four residents signed withdrawal forms, revoking their support for the Petition. Add. 67. When asked why they wanted to revoke, one said they had changed their mind; two said they had felt pressured into signing the Petition; and one thought they had signed the Petition to request additional information, not to purchase the Park. Add. 206-210.

At trial, the parties agreed that the HOA had the burden to submit reasonable evidence that *resident owners* of at least fifty-one percent of the occupied units in the Park approved of the HOA purchasing the Park. See Add. 138. The evidence at trial established that the HOA's Petition included duplicate signatures, signatures of subtenants, signatures of owners who were not residents, and signatures of residents who were not owners. Add. 67, 112. Further, one resident owner whose name appears on the Petition testified that she had no knowledge of the Park being sold or of any effort by the HOA to purchase the Park. Add. 112, 152. She further testified that she was not familiar with the Petition, did not recall anyone asking her to sign it, did not

authorize anyone to sign for her, and that the signature that appeared on the Petition purporting to be hers was not her signature. Add. 153-155. In other words, her signature had been forged.

STATEMENT OF ISSUES OF LAW

Crown Communities seeks Direct Appellate Review of the following issues that were properly raised and preserved in the Superior Court:

1. Whether an administrative agency's regulations and interpretation of a statutory requirement for there to be "reasonable evidence" strips the trial court of its traditional gatekeeper function to assess the veracity of evidence and requires the court to just admit unauthenticated, potentially unreliable or false evidence;

2. Whether strict compliance with G. L. c. 140, § 32R(b)-(c) is necessary for a group or association of residents to exercise a right of first refusal.

ARGUMENT

This case raises essentially every issue that could arise in the implementation of and litigation over G. L. c. 140, § 32R. It implicates unresolved legal questions concerning the degree to which a group of residents or a homeowners' association must comply with the statutory

prerequisites to exercise a right of first refusal. This appeal also concerns the proper role of trial courts in adjudicating disputes over compliance with the statute and whether deference to even irrational positions by administrative agencies is required. These questions of first impression also raise issues of substantial public importance as they are likely to recur in future disputes involving the same statute. Accordingly, this case is an ideal vehicle for definitive guidance from this Court.

I. The Court should clarify that an administrative agency cannot strip a trial court of its evidentiary gatekeeping function in the absence of a clear statutory requirement to the contrary.

This Court has held that trial courts must exclude unauthenticated or unreliable evidence even when statutory requirements for admissibility are met. See *N.E. Physical Therapy Plus, Inc. v. Liberty Mut. Ins. Co.*, 466 Mass. 358, 364-65 (2013). It is an open question, however, as to whether that principle yields in the face of an agency regulation or interpretation to the contrary. No Massachusetts court has decided whether trial courts must perform the same evidentiary gatekeeping function when an agency, such as the Attorney General, enacts rules that contradict the standards in the Massachusetts Guide to Evidence or that

would otherwise require inadmissible or unreliable evidence to be admitted in court proceedings. This case presents that issue of first impression that should be resolved by this Court.

A. The Attorney General's interpretation of "reasonable evidence" undermines the trial court's evidentiary gatekeeping role.

The Act provides:

A group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community. . . shall have the right to purchase. . . the said community for purposes of continuing such use thereof, provided it [] submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association.

G. L. c. 140, § 32R(c)(emphasis added). The Act authorizes the Attorney General to promulgate rules and regulations "necessary for the interpretation, implementation, administration and enforcement of [the Act]." G. L. c. 140, § 32S.

The Attorney General purported to enact such regulations, defining "reasonable evidence" to mean, "without limitation, a document signed by such persons." See 940 CMR 10.09. The regulations do not provide further guidance or elaboration.

The Attorney General argued in her amicus letter to the Appeals Court that under her reading of the Act and the regulations, there is no requirement for residents to verify, attest, or submit other evidence as to the veracity of their signatures, even if, as here, a party challenges that veracity, and even though the burden of proof was on the HOA. The Appeals Court adopted that interpretation, nullifying the trial court's evidentiary gatekeeping role and thereby requiring the trial court on remand to credit the incredible, including an undisputedly forged signature.

Absent guidance from this Court, future trial courts will have to admit, and parties will be precluded from challenging, inauthentic and/or unreliable evidence so long as it conforms with this interpretation of "reasonable."

B. The HOA did not show that fifty-one percent of the resident homeowners supported the petition to buy the Park.

The Attorney General contends that the HOA's Petition is de facto reasonable evidence simply because it has purported signatures of homeowners even though this evidence is substantially deficient. In other words, the position of the Attorney General and the HOA is that any document that contains a signature that

purports to be on behalf of a homeowner, no matter whom it is actually from, is per se proper and counts towards the requisite 51%. This can lead to absurd and unintended results, as this case demonstrates.

At trial, at least one resident homeowner whose name appears on the Petition testified that she never signed it. Others who signed the Petition testified that they did not understand it was a petition to purchase the Park. Other testimony showed that the petition included duplicate signatures. This testimony undermines the Attorney General's position that uncorroborated signatures, standing alone, constitute reasonable evidence and that the trial court may not inquire as to the reliability or authenticity of the signatures.

C. Courts should not defer to the Attorney General's interpretation of "reasonable evidence."

This case also raises the scope of proper deference to an agency charged with overseeing a statutory scheme. Although the general rule is "[t]he interpretation of a statute by the agency charged with primary responsibility for administering it is entitled to substantial deference," such deference is warranted only when the agency's interpretation reflects its experience, technical competence, or specialized

knowledge. See G. L. c. 30A, § 14(7); *Mendes's Case*, 486 Mass. 139, 143 (2020). Here, the Attorney General did not apply any particular expertise, technical skill, or specialized knowledge when construing "reasonable evidence."

The Attorney General's interpretation is utterly illogical and at odds with the Attorney General's proper role. By contending that any signature counts towards the 51%, the Attorney General reads the word "reasonable" out of the statute. Indeed, this would impose on trial courts a definition of "reasonable evidence" that is so plainly *unreasonable* as to make any challenge pointless.

II. The Court should clarify that the HOA must strictly comply with G. L. c. 140, § 32R(b)-(c) to exercise a right of first refusal.

The Act "creates a right of first refusal in favor of tenants of manufactured housing communities." *Greenfield Country Estates Tenants Ass'n v. Deep*, No. 94-052, 1995 Mass. Super. LEXIS 650, at *1 (Mass. Super. Ct. Feb. 15, 1995). To exercise that right, resident-owners must follow certain procedures and meet certain requirements.

Specifically, G. L. c. 140, § 32R(c) requires that any association seeking to exercise a right of first

refusal submit reasonable evidence of meeting the 51% approval threshold, *supra*, and meet the following criteria:

(2) submits to the owner a proposed purchase and sale agreement. . . on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under subsection (b) of this section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement. . . , and (4) closes on such purchase. . . within an additional ninety days after the end of the ninety-day period under clause (3).

The HOA did not satisfy any of the four requirements. This Court should clarify that strict compliance is necessary for a group or association of resident homeowners to exercise their right of first refusal. Not only is this a question of first impression, but this issue is likely to recur, underscoring the need for this Court's guidance.

A. The HOA did not maintain the support of enough resident homeowners.

There is an unresolved question as to whether a group or association must maintain the fifty-one percent threshold throughout the process to preserve its right of first refusal. In this case, after the HOA and Trustee executed the HOA P&S, but before a binding financing commitment was secured or the transaction was closed,

several signatories withdrew their support. The trial court, on remand, did not subtract these signatories (even that of the signatory who testified that her signature on the petition was forged). It is undisputed, however, that without those former signatories, the percentage of supporting homeowners is below fifty-one percent. Requiring a community owner to sell under those circumstances contravenes both the letter and the spirit of the Act, which seeks to secure majority buy-in from community members to purchase the community.

B. The HOA did not offer a "substantially equivalent" P&S under G. L. c. 140, § 32R.

The HOA P&S was not "substantially equivalent" to the Crown P&S, because the Crown P&S was a cash deal and the HOA P&S had a mortgage contingency. The Appeals Court, in a case that did not involve the Act, has held that when a right of first refusal can be exercised only if offers are on "substantially the same terms," an "offer containing a mortgage contingency is not the same as a cash offer because the former is conditioned on the offering party obtaining adequate financing while the latter is unequivocal." *Christian v. Edelin*, 65 Mass. App. Ct. 776, 779 (2006).

This Court, when interpreting G. L. c. 140, § 32R, has stated that for resident homeowners to validly exercise their right of first refusal, they must submit an offer that matches the third-party offer on "substantially the same terms." *Greenfield Country Estates Tenants Ass'n v. Deep*, 423 Mass. 81, 85 (1996). In other words, "substantially the same" is synonymous with "substantially equivalent" in this context.

Here, Crown offered cash and the HOA offered mortgage-contingent financing. Under *Christian* and *Greenfield*, the HOA's offer was not "substantially equivalent." Yet the trial court found on remand that the HOA P&S, with its mortgage contingency, had "substantially equivalent terms and conditions" as Crown's cash offer. This Court should clarify that the lower courts may not disregard *Greenfield*. This is an issue of substantial public importance because it is likely to arise in future cases involving the exercise of a right of first refusal by residents of a manufactured housing community.

C. The HOA did not secure financing within 90 days as required by G. L. c. 140, § 32R.

The HOA was required to obtain a binding financing commitment within ninety days of executing the HOA P&S,

failing which the rights of the resident homeowners to purchase the community terminated. That deadline expired, at the latest, on April 6, 2020. The HOA eventually secured a financing commitment, but not until July 10 and 13, 2020, more than three months late.

After the deadline expired, the HOA alleged that the Trust inhibited its ability to obtain financing by not providing an environmental survey. The HOA, however, did not attempt to substantiate that allegation at trial. Nor did the HOA present any evidence that it sought or obtained an extension of the deadline by agreement, which § 32R(c) allowed it to do.

After trial, the HOA argued that this Court's COVID-19 emergency orders temporarily froze the statutory deadline. When that argument failed, the HOA pivoted to arguing, for the first time, that the lis pendens that Crown had requested caused the delay in obtaining a financing commitment. The HOA did not submit any evidence supporting that claim. Nor could it have. The HOA obtained a financing commitment, despite the lis pendens, albeit belatedly, and the HOA offered no evidence that the lis pendens affected the timing.

The trial court, on remand, ruled with no evidentiary basis that the lis pendens necessarily

prevented the HOA from meeting its statutory deadline and that Crown is precluded from complaining of non-compliance. Essentially, the trial court ruled that any lis pendens automatically excuses the § 32R(c) financing deadline, in the absence of either statutory authority or evidence to support that excuse.

D. The HOA did not submit the necessary request for information.

A further unresolved issue is whether a request for information under G. L. c. 140, § 32R(b) constitutes a condition precedent to the exercise of the right of first refusal. This Court has not yet addressed this question.

In this case, the HOA did not request information relating to proposals to sell the Park. This raises a significant question as to whether the right of first refusal was properly invoked in the first place.

This Court should decide whether a group or association of resident owners must strictly comply with this requirement to exercise the right of first refusal.

STATEMENT ON WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state or federal constitutional questions; or (3) questions of

substantial public interest. See Mass. R. App. P. 11(a). This case presents two of these kinds of questions.

First, this case involves multiple questions of first impression. The Attorney General has stated that the meaning of "reasonable evidence" under the Act is an issue of first impression. No Massachusetts court has addressed whether trial courts must perform their customary evidentiary gatekeeping function -- to exclude inauthentic or unreliable evidence -- when an agency charged with enforcing a statute proffers an entirely unreasonable interpretation that seeks to deny the court its traditional role to assess evidence.

This issue is also one of public importance. In adopting the 51% requirement, the Legislature clearly chose to incorporate democratic norms into the residents' ability to exercise a right of first refusal. Denying the trial court the ability to assess whether signatures are valid and legitimate undermines these norms and impairs the rights of the residents of these communities to have a say in their future. That interest is even more salient here, where there is evidence of some coercion, confusion, forgery, and changing of minds after all the facts have been made clear. Moreover, the public interest is further impacted by the degree of

deference that should, or should not, be given an agency that adopts illogical positions and risks undermining the proper separation of powers on statutory interpretation.

This case also presents unresolved legal questions as to whether a group of resident homeowners or a homeowners' association must strictly comply with the statutory prerequisites under G. L. c. 140, § 32R to exercise the right of first refusal. There are very few reported decisions interpreting the requirements of the statute, and as noted, this case presents the opportunity for guidance on almost all of the requirements of section 32R.

These questions are also of substantial importance to the public interest as they involve virtually every aspect of G. L. c. 140, §32R, and are likely to recur. There are other manufactured housing communities in the Commonwealth, and providing guidance to them on how they should go about exercising their right of first refusal is critical.

Finally, because the Appeals Court has already ruled on many of the issues raised herein, including whether to defer to the Attorney General's interpretation of the statute and whether to excuse non-

compliance with numerous of the statutory requirements of section 32R, this case would not benefit from further consideration by the Appeals Court before a later petition for further appellate review to this Court.

CONCLUSION

The issues raised in this petition implicate the very foundations of property rights, contractual certainty, and separation of powers. Without clear guidance from this Court, the risk of arbitrary and inconsistent outcomes will persist, undermining public trust in the legal process and jeopardizing the interests of those who lawfully seek to purchase manufactured housing communities.

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Dated: August 25, 2025

ADDENDUM

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Excerpts of Volume III Trial Transcript, dated August 17, 2022	150
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Letter to Charles W. Austin Trust from Philip Lombardo, Esq., dated January 2, 2020	178

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Withdrawal Form from Rhonda Bernard, dated February 1, 2020	210
Amicus Letter from Attorney General Andrea Joy Campbell, dated March 27, 2024	211

2072CV00083 Crown Communities, LLC vs. Philip Austin Trustee of The Charles W. Austin Trust et al

- Case Type:
- Contract / Business Cases
- Case Status:
- Open
- File Date
- 02/20/2020
- DCM Track:
- F - Fast Track
- Initiating Action:
- Sale or Lease of Real Estate
- Status Date:
- 02/20/2020
- Case Judge:
-
- Next Event:
-

All Information	Party	Subsequent Action/Subject	Event	Tickler	Docket	Disposition
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Party Information

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Subsequent Action/Subject

<u>Status</u>	<u>Description</u>	<u>SA/Subject #</u>	<u>Status Date</u>	<u>Responding Party</u>	<u>Judgments</u>	<u>Pleading Party</u>
Closed	Counterclaim	1	01/11/2023	Crown Communities, LLC	0	Austin, Philip
Closed	Crossclaim	2	01/11/2023	Pocasset Park Association, Inc.	0	Austin, Philip
Closed	Counterclaim	3	01/11/2023	Crown Communities, LLC	0	Pocasset Park Association, Inc.
Closed	Crossclaim	4	01/11/2023	Austin, Philip	0	Pocasset Park Association, Inc.

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/05/2020 02:00 PM	Second Session	Courtroom 2	Hearing on Preliminary Injunction	Perrino, Hon. Thomas J	Rescheduled
05/29/2020 02:00 PM	Second Session	Courtroom 2	Trial Assignment Conference	Perrino, Hon. Thomas J	Held as Scheduled
09/25/2020 10:00 AM	Third Session	Courtroom 3	Final Pre-Trial Conference		Held as Scheduled
10/19/2020 02:00 PM	Second Session	Courtroom 2	Final Trial Conference	Perrino, Hon. Thomas J	Held as Scheduled
10/28/2020 09:00 AM	Second Session	Courtroom 2	Non-Jury Trial	Perrino, Hon. Thomas J	Not Held
12/04/2020 09:30 AM	Second Session	Courtroom 2	Final Trial Conference	Perrino, Hon. Thomas J	Not Held





<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/14/2020 09:00 AM	Second Session	Courtroom 2	Non-Jury Trial	Perrino, Hon. Thomas J	Not Held
01/06/2021 10:00 AM	Second Session	Courtroom 2	Final Trial Conference		Held as Scheduled
03/17/2021 09:30 AM	Second Session	Courtroom 2	Trial Assignment Conference		Held as Scheduled
04/27/2021 03:00 PM	Second Session	Courtroom 2	Rule 56 Hearing	Buckley, Hon. Elaine M	Held - Under advisement
07/14/2021 10:00 AM	Second Session	Courtroom 2	Final Trial Conference	Perrino, Hon. Thomas J	Not Held
07/19/2021 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Perrino, Hon. Thomas J	Not Held
07/30/2021 10:30 AM	Second Session	Courtroom 2	Trial Assignment Conference	Perrino, Hon. Thomas J	Held as Scheduled
10/29/2021 09:00 AM	Second Session	Courtroom 2	Final Trial Conference	Perrino, Hon. Thomas J	Rescheduled
10/29/2021 09:00 AM	Second Session	Courtroom 2	Trial Assignment Conference	Perrino, Hon. Thomas J	Not Held
11/08/2021 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Perrino, Hon. Thomas J	Not Held
12/17/2021 11:30 AM	Second Session	Courtroom 2	Trial Assignment Conference	Perrino, Hon. Thomas J	Held as Scheduled
03/25/2022 11:00 AM	Second Session	Courtroom 2	Final Trial Conference	Perrino, Hon. Thomas J	Not Held
04/04/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Pasquale, Hon. Gregg J	Held as Scheduled
06/21/2022 02:00 PM	Second Session	Courtroom 2	Hearing on Preliminary Injunction	Hogan, Hon. Maureen	Held as Scheduled
07/22/2022 10:00 AM	Second Session	Courtroom 2	Final Trial Conference	Pasquale, Hon. Gregg J	Rescheduled
07/26/2022 03:00 PM	Second Session	Courtroom 2	Final Trial Conference	Pasquale, Hon. Gregg J	Held as Scheduled
07/29/2022 10:00 AM	Second Session	Courtroom 2	Final Trial Conference	Pasquale, Hon. Gregg J	Rescheduled
08/15/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Pasquale, Hon. Gregg J	Held as Scheduled
08/16/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Pasquale, Hon. Gregg J	Held as Scheduled
08/17/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Pasquale, Hon. Gregg J	Held - Under advisement
08/18/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Callan, Hon. Michael K	Held as Scheduled
08/19/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Callan, Hon. Michael K	Held as Scheduled
08/22/2022 09:00 AM	Second Session	Courtroom 2	Jury Waived Trial	Callan, Hon. Michael K	Held as Scheduled
10/24/2022 02:00 PM	Second Session	Courtroom 2	Jury Waived Trial	Callan, Hon. Michael K	Not Held
11/22/2022 09:30 AM	Second Session	Courtroom 2	Jury Waived Trial	Callan, Hon. Michael K	Held - Under advisement



Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	02/20/2020	05/20/2020	90	04/30/2020
Answer	02/20/2020	06/19/2020	120	04/30/2020
Rule 12/19/20 Served By	02/20/2020	06/19/2020	120	08/11/2020

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Rule 12/19/20 Filed By	02/20/2020	07/20/2020	151	08/11/2020
Rule 12/19/20 Heard By	02/20/2020	08/18/2020	180	08/11/2020
Rule 15 Served By	02/20/2020	06/19/2020	120	08/11/2020
Rule 15 Filed By	02/20/2020	07/20/2020	151	08/11/2020
Rule 15 Heard By	02/20/2020	08/18/2020	180	08/11/2020
Discovery	02/20/2020	12/16/2020	300	12/16/2020
Rule 56 Served By	02/20/2020	01/15/2021	330	09/25/2020
Rule 56 Filed By	03/17/2021	04/15/2021	29	04/15/2021
Final Pre-Trial Conference	02/20/2020	06/14/2021	480	09/25/2020
Judgment	02/20/2020	02/21/2022	732	01/11/2023
Under Advisement	04/27/2021	06/28/2021	62	06/03/2021
Status Review	05/16/2022	06/24/2022	39	07/19/2022
Under Advisement	08/17/2022	09/16/2022	30	12/28/2022
Under Advisement	11/22/2022	12/22/2022	30	12/28/2022
Status Review	11/23/2022	02/23/2023	92	12/28/2022
Status Review	01/11/2023	01/12/2026	1097	
Status Review	02/13/2023	03/13/2025	759	05/23/2023
Review Appeals Filed	05/15/2023	05/15/2024	366	01/02/2025
Review Appeals Filed	07/25/2025	08/25/2025	31	08/05/2025
Review Appeals Filed	07/25/2025	07/27/2026	367	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/20/2020	Early Case Management Conference Pilot Program.		
02/20/2020	Original civil complaint filed.	1	
02/20/2020	Civil action cover sheet filed.	2	
02/20/2020	Plaintiff(s) Crown Communities, LLC's EX PARTE Motion for a Memorandum of Lis Pendens with attached proposed order	3	
02/20/2020	Endorsement on Motion for Memorandum of Lis Pendens (#3.0): ALLOWED		
02/20/2020	Memorandum of Lis Pendens issued Judge: Perrino, Hon. Thomas J Applies To: Philip Austin Trustee of The Charles W. Austin Trust (Defendant) Applies To: Crown Communities, LLC (Plaintiff)	4	 
02/28/2020	APPEARANCE: Attorney appearance On this date Thomas W Aylesworth, Esq. added as Private Counsel for Defendant Pocasset Park Association, Inc.	5	
03/04/2020	Service Returned for Defendant Pocasset Park Association, Inc.: Service through person in charge / agent; In Hand to Albert MacDonald at 11 Third Avenue, Pocasset, MA 02559 on February 24, 2020.	6	 
03/09/2020	Plaintiff, Defendant Crown Communities, LLC, Philip Austin Trustee of The Charles W. Austin Trust, Pocasset Park Association, Inc.'s Joint Motion for Status conference and Accelerate the Matter for a Speedy Trial	7	
03/16/2020	ATTORNEY appearance of Joseph Edward Kelleher, III, Esq. added as Private Counsel for Defendant Philip Austin Trustee of The Charles W. Austin Trust	8	
03/16/2020	Service Returned for Defendant Philip Austin Trustee of The Charles W. Austin Trust: Service accepted by counsel;	9	 













Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/24/2020	ANSWER WITH COUNTERCLAIM AND CROSSCLAIM Received from Defendant Philip Austin Trustee of The Charles W. Austin Trust by Joseph E. Kelleher	10	 Image
03/24/2020	Endorsement on Motion of the parties for status conference and to accelerate the matter for a speedy trial (#7.0): ALLOWED ; Rule 16 Conference to be scheduled by The Clerk's Office		 Image
03/25/2020	The following form was generated: Notice to Appear Sent On: 03/25/2020 09:33:08		
04/07/2020	ANSWER with verified COUNTERCLAIM and CROSSCLAIM: Defendant Pocasset Park Association, Inc.: Answer with a counterclaim and crossclaim	11	 Image
04/07/2020	Defendant(s) Pocasset Park Association, Inc.'s EMERGENCY Motion for a Preliminary Injunction	12	 Image
04/07/2020	Pocasset Park Association, Inc.'s Memorandum in support of motion for preliminary injunction	13	 Image
04/07/2020	Affidavit of Andrew Danforth	14	 Image
04/07/2020	Defendant Pocasset Park Association, Inc.'s Motion for SHORT ORDER OF NOTICE	15	 Image
04/08/2020	Endorsement on Motion for a Preliminary Injunction (#12.0): DENIED as an emergency motion under Superior Court Standing Order 4-30. The clerk will reschedule a hearing when the Court resumes regular business in May 2020		 Image
04/08/2020	Notice to Appear for Hearing on Motion for Preliminary Injunction 5/5/20 at 2:00pm. Copy mailed to WBS, JEK, TWA		
04/20/2020	ANSWER TO THE COUNTERCLAIM AND CROSSCLAIM RECEIVED OF Defendant Philip Austin Trustee of The Charles W. Austin Trust. Envelope #246321	16	 Image
04/30/2020	ANSWER TO CROSSCLAIM Received from Defendant Pocasset Park Association, Inc. by Thomas W. Aylesworth	17	 Image
05/01/2020	Defendant Philip Austin Trustee of The Charles W. Austin Trust's Joint Motion to continue / reschedule an event 05/05/2020 02:00 PM Hearing on Preliminary Injunction	18	 Image
05/01/2020	Hearing on Preliminary Injunction scheduled on 05/05/2020: Rescheduled: Joint request of parties		
05/01/2020	Endorsement on Motion to continue / reschedule an event Preliminary Injunction hearing (#18.0): ALLOWED The motion shall be held 05/29/2020 at 2:00 p.m. via teleconference by calling: 1-866-566-8399 and entering Participant Code: 9344691# Clerk's Notice mailed on 05/01/2020 to WBS, JD, JEK and TWA.		 Image
05/28/2020	Pleading titled, Opposition to Emergency Motion, filed with the court on 05/28/2020, returned to Walter B Sullivan, Esq. The Emergency Motion for Preliminary Injunction was denied as an emergency on 04/08/2020, therefore, this opposition needs to comply with Superior Court Rule 9A Sent to WBS, Notice to JEK, TWA on 5/28/20		 Image
05/28/2020	Docket Note: Reply/sur-reply, Reply to Oppositions to motion for preliminary injunction rejected. This submission does not comply with Superior Court Rule 9A, is not assented to and not jointly filed. The proffered opposition was also rejected for the same reason. Rejected by John Dale.		
05/29/2020	ANSWER TO COUNTERCLAIM of Pocasset Park Association, Inc., FILED by Crown Communities, LLC, WITH JURY DEMAND	19	 Image
05/29/2020	Notice to Appear for Final Pre-Trial Conference 9/25/20 @ 10:00 WBS,JD,JEK,TWA Sent On: 06/01/2020	20	
05/29/2020	ORDER: Pre-trial conference scheduled for 9/25/20 at 10:00 a.m., Trial non-jury 3-4 days scheduled for 10/28/20, at 9:00 a.m.	21	 Image
06/02/2020	Pleading titled, Opposition to emergency motion for Preliminary Injunction, filed with the court on 06/01/2020, returned to Joseph Edward Kelleher, III, Esq. The Emergency Motion was not accepted as an emergency as was to be filed pursuant to S.C. Rule 9A		
06/09/2020	ORDER: TRIAL ORDER/NON-JURY/JURY WAIVED to appear for trial on October 28, 2020, at 9:00am, sent to WBS, JD, JEK, TWA Judge: Perrino, Hon. Thomas J	22	 Image
07/22/2020	Defendant Pocasset Park Association, Inc.'s Motion to dismiss all counts or in the Alternative, for a More Definite Statement	23	 Image









<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/22/2020	Pocasset Park Association, Inc.'s Memorandum in support of P #23.0	23.1	 Image
07/22/2020	Affidavit of No Opposition	23.2	 Image
07/24/2020	Plaintiff Crown Communities, LLC's EMERGENCY Motion to strike Defendant, Pocasset Park Association, Inc's Motion to Dismiss or for More Definite Statement for Failure to comply with Superior Court Rule 9C	24	 Image
07/29/2020	Defendant Pocasset Park Association, Inc.'s Motion for Withdrawal, without Prejudice, of Motion to Dismiss or in the Alternative for a More Definite Statement	25	 Image
08/04/2020	Endorsement on Motion to Withdraw without Prejudice, Motion to Dismiss or in the alternative, for a More Definite Statement (#25.0): No Action Taken Motion (Paper No. 25) is deemed withdrawn and no action taken. Notice to TWA, JEK, JD, WBS on 8/6/20		 Image
08/07/2020	APPEARANCE: Attorney appearance on this date Robert Kraus, Esq. added as Private Counsel for Defendant Philip Austin Trustee of The Charles W. Austin Trust	26	 Image
08/07/2020	WITHDRAWAL: On this date Joseph Edward Kelleher, III, Esq. withdrawn as Private Counsel for Defendant Philip Austin Trustee of The Charles W. Austin Trust	27	 Image
09/25/2020	Pre-Trial ORDER: TRIAL WITHOUT JURY REMAINS SCHEDULED FOR 10/28/20 @ 9:00 A.M. Judge: Gildea, Hon. Mark	28	 Image
09/28/2020	Docket Note: Final Trial Conference 10/19/20 @ 2:00 pm via zoom link sent with notice to: WBS,JD,RK,TWA 9/28/20		
10/19/2020	ORDER: IT IS ORDERED; Non jury trial scheduled for December 14, 2020 at 9:00 a.m. Final trial conference on December 4, 2020, at 9:30 a.m. Any substantive motions in Limine to be filed prior to December 4, 2020.	29	 Image
10/19/2020	ORDER: TRIAL ORDER Non-jury scheduled for December 14, 2020, at 9:00am, to WBS, JD, JD, TWA	30	 Image
10/20/2020	Docket Note: FINAL TRIAL CONF. 12/4/20 AT 9:30 NOTICE AND ZOOM LINKS SENT TO: WBS,JD,RK,TWA 10/20/20.		
11/30/2020	Plaintiff, Defendant Crown Communities, LLC, Pocasset Park Association, Inc.'s Motion to continue / reschedule an event 12/04/2020 09:30 AM Final Trial Conference, 12/14/2020 09:00 AM Non-Jury Trial	31	 Image
11/30/2020	Endorsement on Motion to extend tracking deadline(s) (#31.0): ALLOWED Judge: Perrino, Hon. Thomas J		 Image
12/09/2020	Rule 9A list of documents filed.	32	 Image
12/09/2020	Defendant Pocasset Park Association, Inc.'s Motion to amend the Counterclaim and Cross-Claim	32.1	 Image
12/09/2020	Pocasset Park Association, Inc.'s Memorandum in support of Motion to Amend Counterclaim and Cross-Claim	32.2	 Image
12/09/2020	Affidavit of compliance with Superior Court Rule 9A Applies To: Pocasset Park Association, Inc. (Defendant)	32.3	 Image
12/11/2020	Endorsement on Motion to amend the Counterclaim and Cross-claim (#32.1): ALLOWED Allowed without Opposition (Notices mailed 12/11/20 to WBS, JEK, & TWA)		 Image
01/07/2021	Notice to Appear for Trial Assignment conf. 3/17/21 @ 9:00 changed to 9:30 per atty. via zoom Sent On: 01/07/2021 10:41:48 Notice Sent To: Walter B Sullivan, Esq. Sullivan & Comerford, P.C. 80 Washington St Suite 7, Norwell, MA 02061 Notice Sent To: Robert Kraus, Esq. Kraus & Hummel LLP 99A Court St, Plymouth, MA 02360 Notice Sent To: Thomas W Aylesworth, Esq. Moriarty Troyer & Malloy LLC 30 Braintree Hill Off ParkSuite 205, Braintree, MA 02184		
01/07/2021	ORDER: IT IS ORDERED; Case continued for further Trial conference, counsel to send into clerk's office a new date. Judge: Nickerson, Scott W	33	 Image
02/26/2021	Pleading titled, Defendant's Motion for Speedy Trial or Summary Judgment, filed with the court on 02/26/2021, returned to Robert Kraus, Esq. This Motion needs to comply with Superior Court Rule 9A.		













Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/11/2021	Attorney appearance electronically filed.	34	
03/17/2021	ORDER: IT IS ORDERED; Trial 10 days jury waived 7/19/21, final trial conf. 7/14/21 @ 10:00 (see scanned image for full text)	35	 Image
03/18/2021	Docket Note: FINAL TRIAL CONF. ZOOM 7/14/21 @ 10:00		Image
03/19/2021	Notice to Appear for Rule 56 Motion 4/27/2021 at 3:00pm via zoom. Notice Sent To: Walter B Sullivan, Esq. Sullivan and Comerford, P.C. 80 Washington St Suite 7, Norwell, MA 02061 Notice Sent To: Robert Kraus, Esq. Kraus and Hummel LLP 99A Court St, Plymouth, MA 02360, Notice Sent To: Thomas W Aylesworth, Esq. Marcus Errico Emmer and Brooks P.C. 45 Braintree Hill Off Park Suite 107, Braintree, MA 02184		
03/22/2021	ORDER: TRIAL ORDER JURY WAIVED sent to appear for trial on July 19, 2021, at 9:00am (copy to JD, WS, RK, TA)	36	 Image
04/19/2021	Plaintiff Crown Communities, LLC's Notice of Filing	37	 Image
04/19/2021	Plaintiff Crown Communities, LLC's Motion for summary judgment, MRCP 56	37.1	 Image
04/19/2021	Crown Communities, LLC's Memorandum in support of P #37.1	37.2	 Image
04/19/2021	Philip Austin Trustee of The Charles W. Austin Trust's Memorandum in support of P #37.1	37.3	 Image
04/19/2021	Opposition to P #37.1 filed by Pocasset Park Association, Inc.	37.4	 Image
04/19/2021	Defendant Pocasset Park Association, Inc.'s Statement of Facts in Support	37.5	 Image
04/19/2021	Plaintiff Crown Communities, LLC's Certificate of 9C	37.6	 Image
04/19/2021	Exhibits/Appendix Index of Exhibits in Joint Appendix Accompanying Plaintiff's Motion for Summary Judgment	37.7	 Image
04/19/2021	Exhibits/Appendix IN SEPARATE ENVELOPE		 Image
04/27/2021	Defendant Pocasset Park Association, Inc.'s EMERGENCY Motion to strike Austin Trust Memorandum	38	 Image
04/27/2021	Rule 56 Hearing scheduled on 04/27/2021: Held - Under advisement Comments: 2nd Session: FTR Zoom (CMH) Appeared: Plaintiff - Justin DuClos, Esq. Defendant - Robert Kraus, Esq. Thomas W Aylesworth, Esq.		
04/27/2021	Endorsement on Motion to strike Austin Trust Memorandum (#38.0): ALLOWED for the reasons set forth in the motion. Judge: Buckley, Hon. Elaine M		
06/03/2021	MEMORANDUM & ORDER: and DECISION on Plaintiff's motion for summary judgment and defendant's cross- motion for summary judgment: ORDER: For the foregoing reasons, it is hereby ORDERED that the plaintiff's motion for summary judgment is DENIED, and the Trust's cross-motion for summary judgment is DENIED. Judge: Buckley, Hon. Elaine M (copy mailed to JD, WBS, RK, TWA 6/7/21) (SEE SCANNED IMAGE FOR COMPLETE IMAGE)	39	 Image
06/23/2021	Defendant Pocasset Park Association, Inc.'s EMERGENCY Assented to Motion to continue / reschedule an event 07/14/2021 10:00 AM Final Trial Conference, 07/19/2021 09:00 AM Jury Waived Trial with Affidavit in support	40	 Image
06/25/2021	Endorsement on Motion to continue / reschedule an event Final Trial Conference and Trial (#40.0): ALLOWED This matter is continued to July 30, 2021 at 2:00 p.m. for trial assignment.		 Image
06/25/2021	Event Result:: Final Trial Conference scheduled on: 07/14/2021 10:00 AM		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Has been: Not Held For the following reason: Request of Defendant Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		
06/25/2021	Event Result:: Jury Waived Trial scheduled on: 07/19/2021 09:00 AM Has been: Not Held For the following reason: Request of Defendant Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		
06/28/2021	Notice to Appear for Trial Assignment Conference on July 30, 2021, at 2:00 p.m. (In Person) Sent On: 06/28/2021 10:55:11 Notice Sent To: Walter B Sullivan, Esq. Sullivan and Comerford, P.C. 80 Washington St Suite 7, Norwell, MA 02061 Notice Sent To: Robert Kraus, Esq. Kraus and Hummel LLP 99A Court St, Plymouth, MA 02360 Notice Sent To: Thomas W Aylesworth, Esq. Marcus Errico Emmer and Brooks P.C. 45 Braintree Hill Off Park Suite 107, Braintree, MA 02184		
06/30/2021	Attorney appearance electronically filed Christopher A Veara, Esq. added as Private Counsel for Defendant Philip Austin Trustee of The Charles W. Austin Trust	41	 Image
07/07/2021	WITHDRAWAL of Appearance of Robert Kraus, Esq. withdrawn as Private Counsel for Defendant Philip Austin Trustee of The Charles W. Austin Trust	42	 Image
07/30/2021	Attorney appearance On this date Patrick Audley, Esq. added for Defendant Pocasset Park Association, Inc.	43	 Image
07/30/2021	ORDER: IT IS ORDERED; Final trial conference on 10/29/21 @ 9:00 a.m., Jury waived trial (1-2 weeks) scheduled for November 8, 2021, at 9:00 a.m. Judge: Higginbotham, Christine M	44	 Image
08/02/2021	ORDER: TRIAL ORDER JURY-WAIVED sent to appear for trial on November 8, 2021, at 9:00am, to WBS, JD, TWA, CAV Judge: Perrino, Hon. Thomas J	45	 Image
08/03/2021	Crown Communities, LLC's MOTION for reconsideration of Court Order dated 06/03/2021 re: paper #39.0. (Scanned by CMH to EMB, J., on 08/05/2021)	46	 Image
08/03/2021	Opposition to P#46, Plaintiff's Motion for Reconsideration filed by Thomas Aylesworth, Esq., on behalf of Pocasset Park Association, Inc. (Emailed to Judge Buckley 8/5/21 with copy of (P#39)	46.1	 Image
08/03/2021	Affidavit of compliance with Superior Court Rule 9A with Notice of Filing and Certificate of Service Applies To: DuClos, Esq., Justin (Attorney) on behalf of Crown Communities, LLC (Plaintiff)	46.2	 Image
08/09/2021	Endorsement on Motion for reconsideration of summary judgment (#46.0): DENIED Upon review, the motion is DENIED for the reasons set forth in the Defendant Pocasset Park Association, Inc.'s Opposition which are incorporated herein. None of the arguments raised by the plaintiff warrant this court's reconsideration of its decision. Clerk's Notice emailed on 08/09/2021 to JD, CAV and TWA. Judge: Buckley, Hon. Elaine M		 Image
10/06/2021	Plaintiff Crown Communities, LLC's Assented to Motion to continue / reschedule an event 11/08/2021 09:00 AM Jury Waived Trial	47	 Image
10/22/2021	Endorsement on Motion to continue / reschedule an event Trial (#47.0): ALLOWED Trial Assignment Conference to be scheduled by the Clerk's Office.		 Image
10/25/2021	Event Result:: Final Trial Conference scheduled on: 10/29/2021 09:00 AM Has been: Rescheduled For the following reason: Converted to status conference Comments: trial assignment conf. Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		
10/25/2021	Event Result:: Jury Waived Trial scheduled on: 11/08/2021 09:00 AM Has been: Not Held For the following reason: Joint request of parties Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		










Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/25/2021	The following form was generated: Notice to Appear IN PERSON CTA 10/29/21 @ 9:00 A.M. Sent On: 10/25/2021 14:15:21 Notice Sent To: Walter B Sullivan, Esq. Sullivan and Comerford, P.C. 80 Washington St Suite 7, Norwell, MA 02061 Notice Sent To: Christopher A Veara, Esq. Dunning, Kirrane, McNichols, and Garner, LLP 133 Falmouth Rd, Mashpee, MA 02649 Notice Sent To: Thomas W Aylesworth, Esq. Marcus Errico Emmer and Brooks P.C. 45 Braintree Hill Off Park Suite 107, Braintree, MA 02184 Notice Sent To: Patrick Audley, Esq. Marcus, Errico, Emmer and Brooks, P.C. 45 Braintree Hill Off Park Suite 107, Braintree, MA 02184		
10/29/2021	Event Result:: Trial Assignment Conference scheduled on: 10/29/2021 09:00 AM Has been: Not Held For the following reason: Court Closure Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		
11/05/2021	Notice to Appear for Trial assignment conference on December 17, 2021, at 11:30am Sent On: 11/05/2021 12:56:22 Notice Sent To: Justin DuClos, Esq. J DuClos 33 Railroad Ave Suite 1, Duxbury, MA 02332 Notice Sent To: Christopher A Veara, Esq. Dunning, Kirrane, McNichols, and Garner, LLP 133 Falmouth Rd, Mashpee, MA 02649 Notice Sent To: Thomas W Aylesworth, Esq. Marcus Errico Emmer and Brooks P.C. 45 Braintree Hill Off Park Suite 107, Braintree, MA 02184		
12/17/2021	ORDER: Final Trial conference 3/25/22 at 11:00 a.m., Jury waived trial on 4/4/22, at 9:00 a.m. Joint Pretrial memo to be filed. Judge: Perrino, Hon. Thomas J	48	 Image
12/27/2021	ORDER: TRIAL ORDER Jury-waived sent to appear for trial on April 4, 2022, at 9:00am, to JD, CAV, TWA, PA	49	 Image
03/25/2022	Event Result:: Final Trial Conference scheduled on: 03/25/2022 11:00 AM Has been: Not Held For the following reason: By Court prior to date Comments: Trial Judge out of County Hon. Thomas J Perrino, Presiding Staff: Scott W Nickerson, Clerk of Courts		
03/28/2022	Defendant Pocasset Park Association, Inc.'s Motion to amend the counterclaim	50	 Image
03/28/2022	Pocasset Park Association, Inc.'s Memorandum in support of P #50.0	50.1	 Image
03/28/2022	Opposition to P #50.0 filed by Crown Communities, LLC	50.2	 Image
03/28/2022	Affidavit of no opposition of remaining defendant	50.3	 Image
03/28/2022	Answer to the counterclaim Applies To: Sullivan, Esq., Walter B (Attorney) on behalf of Crown Communities, LLC (Plaintiff); DuClos, Esq., Justin (Attorney) on behalf of Crown Communities, LLC (Plaintiff)	51	 Image
03/28/2022	Joint Pre-Trial Memorandum filed:	52	 Image
03/28/2022	Plaintiff Crown Communities, LLC's Motion in limine to allocate the burden of proof	53	 Image
03/28/2022	Plaintiff Crown Communities, LLC's Motion for a View	54	 Image
03/28/2022	Plaintiff Crown Communities, LLC's Motion in limine to exclude defendant Pocasset Park Association, Inc.'s proposed expert witness Joseph Hagan	55	 Image
03/29/2022	Opposition to Motion to Exclude Testimony of Expert Witness Joseph Hogan filed by Pocasset Park Association, Inc.	56	 Image
03/29/2022	Defendant Pocasset Park Association, Inc. files proposed Findings of Fact Applies To: Pocasset Park Association, Inc. (Defendant)	58	 Image
03/29/2022	Opposition to Motion for a view filed by Pocasset Park Association, Inc.	57	 Image
03/30/2022	Defendant Pocasset Park Association, Inc. files proposed Rulings of Law Applies To: Pocasset Park Association, Inc. (Defendant)	59	 Image










Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/04/2022	Event Result:: Jury Waived Trial scheduled on: 04/04/2022 09:00 AM. Has been: Held as Scheduled		
04/04/2022	ORDER: TRAIL Assignment: Jury waived trial (2 weeks) August 15, 2022. Final trial conference on July 29, 2022.	60	 Image
05/04/2022	Defendant(s) Pocasset Park Association, Inc. motion filed to allow limited discovery	61	 Image
05/04/2022	Pocasset Park Association, Inc.'s Memorandum in support of P#60, Motion to Allow Limited Discovery	61.1	 Image
05/04/2022	Opposition to P#60, Motion to Allow Limited Discovery filed by Crown Communities, LLC	61.2	 Image
05/04/2022	Reply/Sur-reply to P#60.2 Applies To: Pocasset Park Association, Inc. (Defendant)	61.3	 Image
05/04/2022	Affidavit of compliance with Superior Court Rule 9C Applies To: Audley, Esq., Patrick (Attorney) on behalf of Pocasset Park Association, Inc. (Defendant)	61.4	 Image
05/04/2022	Affidavit of compliance with Superior Court Rule 9A with Notice of Filing and Certificate of Service Applies To: Audley, Esq., Patrick (Attorney) on behalf of Pocasset Park Association, Inc. (Defendant)	61.5	 Image
05/19/2022	ORDER: JURY Waived sent to appear for trial on August 15, 2022, at 9:00am, to WBS, JD, CAV, TWA	62	 Image
05/20/2022	Endorsement on motion to (#61.0): allow limited discovery Other action taken The claim in the motion that Crown named nine additional witnesses in a new pretrial memorandum filed just one week before the April 4, 2022 trial date not having been disputed in Crown's opposition, the motion to allow limited discovery is allowed. The request for limited discovery may be an attempt to delay the trial, but no issue relative to discovery is going to delay the August 15, 2022 trial date.		 Image
06/10/2022	Defendant Philip Austin Trustee of The Charles W. Austin Trust's Assented to Motion to reschedule Final Trial Conference to 07/22/2022 at 10:00 a.m., from the scheduled Final Trial Conference on 07/29/2022 at 10:00 a.m.	63	 Image
06/13/2022	Defendant Pocasset Park Association, Inc.'s EMERGENCY Motion for Preliminary Injunction	64	 Image
06/13/2022	Pocasset Park Association, Inc.'s Memorandum in support of P #64.0	64.1	 Image
06/13/2022	Affidavit of Robin Harris	64.2	 Image
06/13/2022	Affidavit of Justine Shorey	64.3	 Image
06/13/2022	Defendant Pocasset Park Association, Inc.'s Motion for Short Order of Notice	65	 Image
06/14/2022	Endorsement on Motion for Short Order of Notice (#65.0): ALLOWED Order of notice to issue returnable on June 21, 2022, at 2:00 p.m. Judge: Higginbotham, Christine M		 Image
06/14/2022	The following form was generated: Notice to Appear Sent On: 06/14/2022 11:03:08		
06/14/2022	The following form was generated: Notice to Appear Sent On: 06/14/2022 11:03:17		
06/14/2022	Summons and order of notice issued on a EMERGENCY Motion for a Preliminary Injunction , returnable on 06/21/2022 02:00 PM Hearing on Preliminary Injunction. Judge: Hogan, Hon. Maureen	66	
06/16/2022	Opposition to defendant Pocasset Park's motion for preliminary injunction filed by Philip Austin Trustee of The Charles W. Austin Trust	67	 Image
06/16/2022	Affidavit of Philip Austin, Trustee	67.1	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/16/2022	Endorsement on Motion to continue / reschedule an event final trial conference to July 22, 2022 (#63.0): ALLOWED		 Image
06/16/2022	Event Result:: Final Trial Conference scheduled on: 07/22/2022 10:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: Assented to motion Hon. Gregg J Pasquale, Presiding Staff: Scott W Nickerson, Clerk of Courts		
06/21/2022	Affidavit of Kevin Comeau	68	 Image
06/21/2022	Hearing on Preliminary Injunction scheduled on 06/21/2022: Held as Scheduled Comments: 2nd Session: FTR (REM) Appeared: Plaintiff - Kayla A Sepulveda, Esq. Defendant - Christopher A Veara, Esq. Patrick Audley, Esq.		 Image
06/21/2022	Endorsement on Motion for a Preliminary Injunction (#64.0): DENIED After hearing, motion Denied because the court finds that Pocasset Park has not shown a likelihood of success on the merits. Clerk's Notice emailed on 06/22/2022 to Kayla A Sepulveda, Esq., kmacleod@sulsul.com; Walter B Sullivan, Esq., wsullivanjr@sulsul.com. Justin DuClos, Esq., j@jduclos.com; Christopher A Veara, Esq., cveara@dunningkirkane.com; Thomas W Aylesworth, Esq., taylesworth@meeb.com		 Image
07/26/2022	Event Result:: Final Trial Conference scheduled on: 07/26/2022 03:00 PM Has been: Held as Scheduled Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
07/26/2022	ORDER: Plaintiff's oral motion to file a summary judgment motion: DENIED. Jury waived trial as previously scheduled: 8/15/2022	69	 Image
07/26/2022	Endorsement on Motion in limine to (#53.0): ALLOWED by agreement. Pocasset has the burden of proof as the party claiming a statutory right of first refusal.	70	 Image
07/26/2022	Endorsement on Motion in limine for (#54.0): View ALLOWED	71	 Image
08/04/2022	WITHDRAWAL On this date Patrick Audley, Esq. withdrawn for Defendant Pocasset Park Association, Inc.	72	 Image
08/15/2022	TRIAL without jury Hon. Michael Callan, presiding Plaintiff's Attys: Walter B. Sullivan, Justin Duclos Def'ts. Attys: Thomas W. Aylesworth, Christopher A. Veara Robert E. Manning, Esq.	73	 Image
08/16/2022	Event Result:: Jury Waived Trial scheduled on: 08/16/2022 09:00 AM Has been: Held as Scheduled Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
08/17/2022	Matter taken under advisement: Jury Waived Trial scheduled on: 08/17/2022 09:00 AM Has been: Held - Under advisement Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
08/18/2022	Event Result:: Jury Waived Trial scheduled on: 08/18/2022 09:00 AM Has been: Held as Scheduled Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
08/19/2022	Event Result:: Jury Waived Trial scheduled on: 08/19/2022 09:00 AM Has been: Held as Scheduled Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
08/22/2022	Event Result:: Jury Waived Trial scheduled on: 08/22/2022 09:00 AM Has been: Held as Scheduled Hon. Michael K Callan, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Staff: Scott W Nickerson, Clerk of Courts		
08/22/2022	Plaintiff Crown Communities, LLC's Motion for special motion to dismiss all deft., Pocasset Park Association, Inc.'s, second amended counterclaim under MGL c. 231, Sect. 59H	73.1	 Image
08/22/2022	Endorsement on Motion for special motion to dismiss all counts of second amended counterclaim: Presented at close of evidence. (#80.0): Reserved for Findings & Rulings		 Image
08/24/2022	Scheduled: Judge: Callan, Hon. Michael K Event: Jury Trial Date: 08/16/2022 Time: 09:00 AM		
08/24/2022	Notice to Appear for final arguments via zoom		 Image
10/05/2022	Plaintiff Crown Communities, LLC's Joint Motion to continue / reschedule an event to extend the time for filing of rulings of law and findings of fact and continue final arguments10/24/2022 02:00 PM Jury Waived Trial	74	 Image
10/06/2022	Endorsement on Motion to extend tracking deadline(s) (#74.0): ALLOWED Date to be set by court and parties notified, by Judge Callan Judge: Manning, Robert		 Image
10/24/2022	Event Result:: Jury Waived Trial scheduled on: 10/24/2022 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
10/26/2022	ORDER: Jury waived trial ARGUMENT order issued by Callan, J. and sent this date to Walter B. Sullivan, Esq., Justin DuClos, Esq., Christopher A. Veara, Esq., and Thomas W. Aylesworth, Esq. THIS MATTER TO BE HEARD BY ZOOM AT 9:30 am ON MEETING NUMBER 161-877-8178. Judge: Callan, Hon. Michael K	75	 Image
10/28/2022	Defendant Philip Austin Trustee of The Charles W. Austin Trust files proposed Findings of Fact & Rulings of Law Applies To: Veara, Esq., Christopher A (Attorney) on behalf of Philip Austin Trustee of The Charles W. Austin Trust (Defendant)	76	 Image
10/28/2022	Plaintiff Crown Communities, LLC files proposed Findings of Fact & Rulings of Law Applies To: Sullivan, Esq., Walter B (Attorney) on behalf of Crown Communities, LLC (Plaintiff); DuClos, Esq., Justin (Attorney) on behalf of Crown Communities, LLC (Plaintiff)	77	 Image
10/28/2022	Brief filed: Post Trial Brief Judge: Callan, Hon. Michael K Applies To: Pocasset Park Association, Inc. (Defendant)	78	 Image
11/14/2022	Brief filed: POST TRIAL BRIEF (emailed to Judge Callan 11/17/22) Applies To: Pocasset Park Association, Inc. (Defendant)	79	 Image
11/22/2022	Matter taken under advisement: Jury Waived Trial scheduled on: 11/22/2022 09:30 AM Has been: Held - Under advisement Hon. Michael K Callan, Presiding Staff: Scott W Nickerson, Clerk of Courts		
12/28/2022	Findings of Fact and Rulings of Law: and Order for Judgment for the plaintiff/defendant-in-counterclaim, Crown Communities, LLC. (See scanned image for complete findings) (Copy mailed to WBS, JD, CAV, TWA) Judge: Callan, Hon. Michael K	80	 Image
01/11/2023	DECLARATORY JUDGMENT G.L. c. 231A for Plaintiff(s) Crown Communities, LLC against Defendant(s) Philip Austin Trustee of The Charles W. Austin Trust, Pocasset Park Association, Inc.. It is ORDERED, ADJUDGED, AND DECLARED: that (1) the Pocasset Park Association, Inc., did not lawfully exercise a statutory right of first refusal pursuant to G.L. c. 140, Sect. 32R (Count I of Pocasset Park Association, Inc.'s, counterclaim against Crown Communities, LLC and crossclaim against Philip Austin, Trustee of the Charles W. Austin Trust).; (2)	81	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	<p>The Purchase and Sale Agreement, which was executed between Philip Austin, Trustee of the Charles W. Austin Trust, and Crown Communities, LLC, is valid and enforceable (crossclaim and counterclaim of Philip Austin, Trustee of the Charles W. Austin Trust against Pocasset Park Association, Inc., and Crown Communities, LLC); (3) The Purchase and Sale Agreement executed between Philip Austin, Trustee of the Charles W. Austin Trust and Pocasset Park Association, Inc., is not valid or enforceable (crossclaim and counterclaim of Philip Austin, Trustee of the Charles W. Austin Trust against Pocasset Park Association, Inc., and Crown Communities, LLC). (4) Philip Austin, Trustee of the Charles W. Austin Trust, is obliged to sell Pocasset Park to Crown Communities, LLC, and not to Pocasset Park Association, Inc., (Count II of Crown Communities, LLC's, complaint). (5) Pocasset Park Association, Inc. has not proven that Philip Austin, Trustee of the Charles W. Austin Trust, unreasonably delayed the ability of Pocasset Park Association, Inc. to close on its Purchase and Sale Agreement (Count II of Pocasset Park Association, Inc.'s cross-claim against Philip Austin, Trustee of the Charles W. Austin Trust).</p> <p>It is ORDERED that judgment shall enter in favor of Crown Communities, LLC and against Pocasset Park Association, Inc. on the latter's counterclaims that Crown Communities, LLC: (1) tortuously interfered with Pocasset Park Association, Inc.'s contract to purchase Pocasset Park (Count III); (2) violated G.L. c. 93A (Count IV); and (3) violated the Massachusetts Civil Rights Act (Count V).</p> <p>It is FURTHER ORDERED, consistent with the prayers for relief of Crown Communities, LLC that its claims against Philip Austin, Trustee of the Charles W. Austin Trust for Breach of Contract (Count I) and Detrimental Reliance (Count III) are MOOT.</p> <p>No party shall be entitled to costs. (copy mailed to WBS, JD, CAV, TWA)</p>		
01/23/2023	<p>Defendant's Notice of intent to file motion motion to alter or amend judgment pursuant to Mass. R. Civ. P. 59(e) with copy of motion and memorandum</p> <p>Applies To: Pocasset Park Association, Inc. (Defendant)</p>	82	 Image
02/16/2023	Rule 9A list of documents filed.	83	 Image
02/16/2023	Defendant Pocasset Park Association, Inc.'s Motion to Alter or Amend Judgment	83.1	 Image
02/16/2023	Pocasset Park Association, Inc.'s Memorandum in support of P #84.1	83.2	 Image
02/16/2023	Opposition to P #84.1 filed by Crown Communities, LLC	83.3	 Image
02/16/2023	<p>Reply/Sur-reply</p> <p>to P #84.3 filed by Pocasset Park Association, Inc.</p>	83.4	 Image
02/16/2023	Affidavit of No Opposition of remaining parties	83.5	 Image
02/16/2023	Defendant Pocasset Park Association, Inc.'s Certificate of Compliance with Superior Court Rule 9C	83.6	 Image
02/17/2023	Docket Note: Motion to Alter or Amend Judgment emailed to Judge Callan, along with Findings of Facts and Judgment, on 2/17/23		
03/10/2023	ORDER: DECISION and ORDER on Pocasset Park Association, Inc.'s, Rule 59(c) motion: For the foregoing reasons, Pocasset Park Association, Inc.'s, motion to alter or amend Judgment pursuant to Mass. R. Civ. P. 59(e) is DENIED. (copy mailed to WBS, JD, CAV, TWA)	84	 Image
03/28/2023	<p>Notice of appeal filed.</p> <p>Copy of notice mailed to WBS, CAV, cert re transcript to TWA</p> <p>Applies To: Pocasset Park Association, Inc. (Defendant)</p>	85	 Image
03/31/2023	Certification/Copy of Letter of transcript ordered from Court Reporter 08/15/2022 09:00 AM Jury Waived Trial, 08/16/2022 09:00 AM Jury Waived Trial, 08/17/2022 09:00 AM Jury Waived Trial, 08/18/2022 09:00 AM Jury Waived Trial, 08/22/2022 09:00 AM Jury Waived Trial Margaret McDonough	86	 Image
05/04/2023	CD of Transcript of 08/15/2022 09:00 AM Jury Waived Trial, 08/16/2022 09:00 AM Jury Waived Trial, 08/17/2022 09:00 AM Jury Waived Trial, 08/18/2022 09:00 AM Jury Waived Trial, 08/22/2022 09:00 AM Jury Waived Trial received from Peggy McDonough. 5 PDF		
05/11/2023	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).	87	
05/12/2023	Notice to Clerk of the Appeals Court of Assembly of Record	88	 Image
05/15/2023	<p>Notice of assembly of record sent to Counsel</p> <p>Applies To: Aylesworth, Esq., Thomas W (Attorney) on behalf of Pocasset Park Association, Inc.</p>	89	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	(Defendant); Sullivan, Esq., Walter B (Attorney) on behalf of Crown Communities, LLC (Plaintiff); Veara, Esq., Christopher A (Attorney) on behalf of Philip Austin Trustee of The Charles W. Austin Trust (Defendant)		
05/15/2023	Appeal: Statement of the Case on Appeal (Cover Sheet).	90	
05/19/2023	Notice of Entry of appeal received from the Appeals Court Docket # 2023-P-0580	91	
01/02/2025	Rescript received from Appeals Court; judgment AFFIRMED So much of the judgment as entered on the counterclaim for violation of the MCRA is affirmed. In all other respects, the judgment and order on the motion to amend the judgment are vacated, and the matter is remanded for further consideration consistent with the opinion of the Appeals Court..	92	
01/02/2025	JUDGMENT/ORDER after Rescript: The original judgment (#81.0) is Affirmed in part. So much of the judgment as entered on the counterclaim for violation of the MCRA is affirmed. In all other respects, the judgment and order on the motion to amend the judgment are vacated, and the matter is remanded for further consideration consistent with the opinion of the Appeals Court.	93	
01/02/2025	Docket Note: Notice of Appeal dated 12/27/2024 and updated docket sheet emailed to the Appeals Court		
01/24/2025	ORDER: Parties to Supplement the Trial Record Please see scanned image for full text	94	
03/27/2025	Findings of Fact and Rulings of Law: AMENDED Findings of Fact, Rulings of Law, and ORDER on REMAND Judge: Callan, Hon. Michael K	95	
04/09/2025	AMENDED Finding by the Court. It is ORDERED and ADJUDGED:: This matter came before the Court for further consideration after remand from the Appeals Court, It is ORDERED that judgment shall enter in favor of Crown Communities, LLC and against Pocasset Park Association, Inc. on the latter's counterclaims that Crown Communities, LLC: (1) tortiously interfered with Pocasset Park Association, Inc.'s contract to purchase Pocasset Park (Count III), (2) violated G.L. c. 93A (Count IV), and (3) violated the Massachusetts Civil Rights Act (Count V). It is Further ORDERED, consistent with the prayers for relief of Crown Communities, LLC that its claims against Philip Austin, as Trustee of the Charles W. Austin Trust, for breach of contract (Count I) and detrimental reliance (Count III) are MOOT. No party shall be entitled to costs. (copies mailed to WBS, JD, TWA, CAV 4/10/25)	96	
04/09/2025	Finding by the Court. It is ORDERED, ADJUDGED and DECLARED: This matter came before the Court for further consideration after remand from the Appeals Court, (1) the Pocasset Park Association, Inc. lawfully exercised its statutory right of first refusal pursuant to G.L. c. 140, § 32R (Count I of Pocasset Park Association, Inc.'s counterclaim against Crown Communities, LLC and crossclaim against Philip Austin, as Trustee of the Charles W. Austin Trust); (2) the purchase and sale agreement executed between Philip Austin, as Trustee of the Charles W. Austin Trust and Pocasset Park Association, Inc. is valid and enforceable (crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.); (3) the purchase and sale agreement, which was executed between Philip Austin, as Trustee of the Charles W. Austin Trust, and Crown Communities, LLC is not enforceable (crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.), due to the Association's valid exercise of its right of first refusal. (4) Philip Austin, as Trustee of the Charles W. Austin Trust, is obligated to sell Pocasset Park to Pocasset Park Association, Inc. and not to Crown Communities, LLC. (Count II of Crown Communities, LLC's complaint); and (5) Pocasset Park Association, Inc. has not proven that Philip Austin, as Trustee of the Charles W. Austin Trust, unreasonably delayed the ability of Pocasset Park Association, Inc. to close on its purchase and sale agreement (Count II of Pocasset Park Association, Inc.'s cross-claim against Philip Austin, as Trustee of the Charles W. Austin Trust). (Copies mailed to WBS, JD, TWA, CAV 4/10/25)	97	
05/06/2025	APPEARANCE electronically filed on this date Mark D Finsterwald, Esq. added as Private Counsel for Plaintiff Crown Communities, LLC	98	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/06/2025	APPEARANCE electronically filed On this date Kenneth Scott Leonetti, Esq. added as Private Counsel for Plaintiff Crown Communities, LLC	99	 Image
05/06/2025	Notice of appeal filed. Applies To: Crown Communities, LLC (Plaintiff)	100	 Image
05/13/2025	Certification/Copy of Letter of transcript ordered from Court Reporter	101	 Image
05/16/2025	Notice of appeal filed. Applies To: Pocasset Park Association, Inc. (Defendant)	102	 Image
07/18/2025	Appeal: Party's Letter received re: no transcript on appeal Applies To: Pocasset Park Association, Inc. (Defendant)	103	 Image
07/18/2025	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).	104	
07/25/2025	Notice to Clerk of the Appeals Court of Assembly of Record	105	 Image
07/25/2025	Notice of assembly of record sent to Counsel	106	 Image
07/25/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	107	 Image
08/04/2025	Appeal entered in Appeals Court on 08/04/2025 docket number 2025-P-0951	108	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Judgment after Non- Jury Trial	01/11/2023	

APPEALS COURT
Full Court Panel Case
Case Docket

CROWN COMMUNITIES, LLC vs. PHILIP AUSTIN & another
2023-P-0580

CASE HEADER

Case Status	Closed: Rescript issued
Status Date	12/31/2024
Nature	Real Estate
Entry Date	05/19/2023
Appellant	Defendant
Case Type	Civil
Brief Status	
Brief Due	
Arg/Submitted	04/17/2024
Decision Date	12/03/2024
Panel	Vuono, Rubin, Walsh, JJ.
Citation	105 Mass. App. Ct. 113
Lower Court	Barnstable Superior Court
TC Number	2072CV00083
Lower Ct Judge	Michael K. Callan, J.
TC Entry Date	02/20/2020
SJ Number	
FAR Number	
SIC Number	

INVOLVED PARTY

Crown Communities, LLC
Plaintiff/Appellee
Red brief filed
1 Enl, 60 Days

Philip Austin
Defendant

Pocasset Park Association, Inc.
Defendant/Appellant
Blue brief & appendix filed
2 Enls, 69 Days

Attorney General
Amicus (defendant)
Awaiting green brief

WCVB Channel 5 Boston
Other interested party


ATTORNEY APPEARANCE

[Walter B. Sullivan, Esquire](#)
[Justin DuClos, Esquire](#)
[Kayla Sepulveda, Esquire](#)
[Christine A. Maglione, Esquire](#)
[Kevin M. Burke, Esquire](#)
[Christopher A. Veara, Esquire](#)

[Thomas W. Aylesworth, Esquire](#)

[Ellen Peterson, A.A.G.](#)

DOCUMENTS

[Appellant Brief](#) 
[Appellee Brief](#) 

ORAL ARGUMENTS

0:00 / 0:00

DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/19/2023	#1	Lower Court Assembly of the Record Package
05/19/2023		Notice of entry sent.
05/19/2023	#2	Civil Appeal Entry Form filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.

05/23/2023	#3	Docketing Statement filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
06/14/2023	#4	Motion of Appellant to extend date for filing brief and appendix filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
06/15/2023		RE#4: Allowed to 08/14/2023. Notice sent.
08/03/2023	#5	Motion of Appellant to extend date for filing brief and appendix filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
08/03/2023		RE#5: Allowed to 09/05/2023. Notice sent.
08/03/2023	#6	RESPONSE filed for Philip Austin by Attorney Christopher Veara.
08/08/2023		RE#6: Treating the within as a motion for reconsideration, upon reconsideration, this Court's 8/3/23 action on Paper #5 stands. Notwithstanding, no further enlargement should be anticipated. (D'Angelo, J.) . *Notice.
09/06/2023		Notice of rejection of brief/appendix of Pocasset Park Association, Inc. as noncompliant for the reasons indicated on the checklist: 11 (Scanned documents in addendum, Scanned documents in Vol I of III, the scanned documents after the transcripts in Vol II, and scanned documents in Vol III). Accordingly, on or before 09/08/2023, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix. *Notice sent.
09/06/2023	#7	Appellant brief filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
09/06/2023	#8	Appendix (Vol I of III) filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
09/06/2023	#9	Appendix (Vol II of III) filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
09/06/2023	#10	Appendix (Vol III of III) filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
09/22/2023	#11	Notice of appearance filed for Crown Communities, LLC by Attorney Christine Maglione.
09/22/2023	#12	MOTION of Appellee to extend brief due date filed for Crown Communities, LLC by Attorney Christine Maglione.
09/25/2023	#13	Opposition to appellee's motion to extend time to file brief filed for Philip Austin by Attorney Christopher Veara.
09/25/2023		RE#12: Allowed to 12/05/2023. Notice sent.
12/06/2023	#14	Notice of rejection of brief/appendix of Crown Communities, LLC as noncompliant for the reasons indicated on the checklist: 3 (addendum), 11 (addendum). Accordingly, on or before 12/11/2023, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix. *Notice sent.
12/07/2023	#15	Appellee brief filed for Crown Communities, LLC by Attorney Christine Maglione.
12/14/2023	#16	Notice of Intent to not file Brief filed for Philip Austin by Attorney Christopher Veara.
02/14/2024		Notice sent seeking information on unavailability for oral argument in April 2024
02/16/2024	#17	Response from Christopher A. Veara, Esquire re: unavailable for oral argument April 1, 2, 3, 4, 5.
02/16/2024	#18	Response from Walter B. Sullivan, Esquire re: unavailable for oral argument April 11.
02/29/2024	#19	Notice of 04/17/2024, 9:30 AM argument at Allan M. Hale (Rm Four) sent.
03/04/2024		Response from Walter B. Sullivan, Esquire re: will appear and argue on 04/17/2024.
03/04/2024		Response from Thomas W. Aylesworth, Esquire re: will appear and argue on 04/17/2024. (Received 3/1/2024)
03/04/2024		Response from Christopher A. Veara, Esquire re: will appear and argue on 04/17/2024. (Received 2/29/2024)
03/07/2024		ORDER: It has come to the court's attention that pages 183,188 & 213 Appendix Vol. I of III and pages 78,81,83,89,91,92,100,102 and 104 of the are not high quality and are difficult to view. Pocasset Park Association, Inc. shall electronically re-file the Appendix volumes I and III containing more legible, higher quality production of those pages or a letter stating that no better copy exists on, or before 03/18/2024. The clearly marked revised appendix volumes or letter can be submitted using the appendix filing code on efilema.com. *Notice
03/18/2024	#20	RESPONSE filed for Pocasset Park Association, Inc. by Attorney Thomas Aylesworth.
03/22/2024	#21	Appellee, Philip Austin, Trustee of the Charles W. Austin Trust, Motion to Appear Remote for Oral Argument filed for Philip Austin by Attorney Christopher Veara.
03/26/2024	#22	Notice of appearance of Ellen Peterson for Attorney General.
03/27/2024	#23	Amicus Letter filed for Attorney General by Attorney Ellen Peterson.
04/02/2024	#24	Motion to have a camera in the courtroom, filed for WCVB Channel 5 Boston.
04/02/2024		ORDER: (RE#24) Allowed. WCVB is permitted to electronically record and/or transmit the oral argument of this appeal consistent with the protocols established in S.J.C. Rule 1:19. Details for equipment set up will be coordinated by the Clerk's Office. (Vuono, Rubin & Walsh, JJ.). *Notice
04/16/2024		Response from Christine A. Maglione, Esquire re:(Telephone notice) Sitting on 04/17/2024.
04/16/2024		Response from Kevin M. Burke, Esquire re:(Telephone notice) Sitting on 04/17/2024.
04/16/2024	#25	ORDER: (RE#21) Denied. See Mass.R.A.P. 19(e) ("An appellee who fails to file a timely brief will not be heard at oral argument except by permission of the appellate court."). Clients, interested parties, or any person not presenting oral argument who wishes to view the hearing may do so via livestream at the Appeals Court's YouTube Page. (Vuono, Rubin, Walsh, JJ.). *Notice/Attest.
04/16/2024	#26	Motion to file reply to Amicus Letter filed for Crown Communities, LLC by Attorney Christine Maglione.
04/16/2024	#27	Proposed reply brief filed for Crown Communities, LLC by Attorney Christine Maglione.
04/17/2024		Oral argument held. (Vuono, J., Rubin, J., Walsh, J.).

08/28/2024 #28	ORDER: The one hundred and thirty day guideline for the above entitled case is waived by the order of the Court. By the Court (Vuono, Rubin, & Walsh JJ.)*Notice
12/03/2024	RE#26: Denied. *Notice.
12/03/2024 #29	Decision: Full Opinion (Vuono, J.). So much of the judgment as entered on the counterclaim for violation of the MCRA is affirmed. In all other respects, the judgment and order on the motion to amend the judgment are vacated, and the matter is remanded for further consideration consistent with the opinion of the Appeals Court. *Notice.
12/31/2024	RESCRIPT to Trial Court.

As of 12/31/2024 4:15pm

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2072CV00083

CROWN COMMUNITIES LLC

vs.

PHILIP AUSTIN, as Trustee,¹ and another²

**MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

The plaintiff, Crown Communities LLC ("Crown"), wishes to purchase the Pocasset Mobile Home Park LLC (the "Park"), a mobile home park located in Bourne, Massachusetts. The Park is owned by the Charles W. Austin Trust (the "Trust"). The Park's association, Pocasset Park Association, Inc. (the "association"), asserts that it has a right of first refusal to purchase the property, which it wishes to exercise. In an effort to execute the contract, Crown has filed its complaint against the Trust and the association alleging three counts: Count I, Breach of Contract by the Trust; Count II, Declaratory Relief pursuant to G. L. c. 231A against the Trust and the association; and Count III, Detrimental Reliance against the Trust.

This matter is before the court on Crown's motion for summary judgment as well as the Trust's cross-motion for summary judgment. The Trust does not oppose Crown's motion, and rather, joins its argument. The association opposes. Upon review of the record and parties' memoranda, Crown's motion for summary judgment is **DENIED** and the Trust's cross-motion for summary judgment is **DENIED**.

¹ Of the Charles W. Austin Trust.

² Pocasset Park Association, Inc.

BACKGROUND

On November 15, 2019, Crown executed a purchase and sale agreement with the Trust through its trustee, defendant Philip Austin, to purchase the Park. On November 20, 2019, notice of the proposed sale of the Park was provided by the Trust to all known residents of the Park. This notice included the terms of the contract, specifically the purchase price.

On December 23, 2019, the residents of the Park formed the association. On January 2, 2020, the association formally requested information regarding the purchase and sale agreement between Crown and the Trust. Included in their request was notification that the association wished to exercise a right of first refusal to purchase the property being offered to Crown. They also attached a purchase and sale agreement dated December 30, 2019, which was similar to Crown's offer. As part of the documentation, the association included signatures of at least fifty-one percent of the residents of the Park indicating a desire to move forward with the purchase, and commitment letters from two lenders, Resident Owned Communities USA ("ROC") as the primary lender and BlueHub Loan Fund, Inc. ("BlueHub") as the secondary. Both commitment letters detailed certain conditions on which financing would be extended.

The association claims that the Trust and Crown must honor the association's right of first refusal. Crown and the Trust wish to enforce their contract.

DISCUSSION

The standard of review for summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as matter of law. Mass. R. Civ. P. 56; *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991) (quotations omitted). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of

the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). To survive summary judgment, the non-moving party must then designate specific facts showing there is a genuine issue for trial. *Id.*

Crown's Motion for Summary Judgment

Crown's motion for summary judgment argues that the association was required to submit a request for financial information to the Trust prior to the purchase and sale agreement being executed between Crown and the Trust. Having failed to do so, the association failed to trigger a right of first refusal.

Pursuant to G. L. c. 140, § 32R(a) of the Massachusetts Manufactured Housing Act, the owner of a manufactured housing community shall give notice to each resident of the community of any intention to sell the land on which the community is located. Before a manufactured housing community may be sold or leased for any purpose that would result in a change of use or discontinuance of the community as a mobile home community, the owner shall notify each resident of the community of the financial details of the offer. G. L. c. 140, § 32R(b). If the sale does not constitute such a discontinuance, an owner need only give each resident such notice if more than fifty percent of the tenants residing in the community or association requests the financial information related to the proposed sale. G. L. c. 140, § 32R(b).

Pursuant to G. L. c. 140, § 32R(c), an association of residents entitled to notice under Section 32R(b) has a right of first refusal to purchase the land the owner intends to sell:

“A group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase, ... the said community for purposes of continuing such use thereof, provided it (1) submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement or lease agreement on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under subsection (b) of this section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement or lease, and (4) closes on such purchase or lease within an additional ninety days after the end of the ninety-day period under clause (3).”

Here, the resident homeowners never received an initial notice from the Trust under G. L. c. 140, § 32R(a) indicating that the Trust was interested in selling the property. They did, however, receive notice of the purchase and sale agreement with Crown that included the agreement’s financial information, pursuant to G. L. c. 140, § 32R(b) on November 20, 2019. Upon receiving the notice, the residents promptly formed the association, comprised of more than fifty-one percent of the resident owners. Within forty-five days, the association notified the Trust that it intended to exercise its right of first refusal and included a proposed purchase and sale that was “similar” to Crown, and commitment letters from ROC and BlueHub to finance the purchase.

Based on the record before the court, the association has followed the statutory requirements set forth in G. L. c. 140D, § 32R. Upon receipt of the notice from the Trust that it had a proposed contract to sell the Park to Crown, the association submitted a proposed purchase and sale to the Trust within forty-five days seeking to exercise their right of first refusal. As Crown admits, the terms of the proposed purchase and sale were “similar” to that of Crown, undoubtedly because the association had been provided the terms of Crown’s contract.

Crown takes the position that the association’s right of first refusal was never triggered because the association did not request further information regarding Crown’s offer prior to the

execution of the purchase and sale. Such a position would yield an absurd result. *Cargill, Inc.*, 429 Mass. at 82 (court cannot read a statute to produce an illogical result). Here, the Trust failed to provide the initial notice pursuant to Section 32R(a), and instead provided notice pursuant to Section 32R(b), including the financial information. In essence, the Trust would be able to circumvent the association's right of first refusal by simply omitting notice under Section 32R(a), and offering notice under Section 32R(b); the association, having not received the initial notice under Section 32R(a), would have no reason to submit a request for further information under Section 32R(b) until after, as Crown argues, it was too late – after a purchase and sale agreement was executed – thereby avoiding a right of first refusal from ever being triggered under Section 32R(c). To read the statute in this way would render the notice requirement under Section 32R(a) superfluous.

Of note, Crown quotes G. L. c. 140, § 32P to argue that a request for information or similar notice must be on file with the owner before the owner is required to provide information concerning the financial terms of the sale. G. L. c. 140, § 32P. A close reading of the statute reveals a fuller picture:

“For a proposed sale ... by the owner which will result in a change of use or a discontinuance of the community [residents] will receive information at least two years before the change becomes effective. Otherwise, Requests for Information or similar notices from more than fifty percent of the tenants residing in the community must be on file with the owner before the owner is required to give [residents] information concerning the financial terms of a sale”

(Emphasis added). The effective date provided in the purchase and sale agreement between the Trust and Crown is defined in the agreement as the date the agreement was executed by both seller and purchaser: November 15, 2019. The association did not receive notice of the purchase and sale until November 20, 2019. Therefore, even if the court adopted Crown's position, it cannot be said as a matter of law that the provision quoted by Crown would apply as the

association did not “receive information” at least two years before the change was to become effective. G. L. c. 140, § 32P.

Particularly instructive, albeit not binding, on this argument is *Greenfield Country Estates Tenants Ass’n, Inc. v. Deep*, 3 Mass. L. Rptr. 348 (Feb. 15, 1995) (Spina, J.). In *Greenfield*, the residents of a mobile home park were not provided notice pursuant to either G. L. c. 140D, § 32R(a) or G. L. c. 140D, § 32R(b), and were informed of the sale only after it had been completed. The purchaser of the property argued that the tenants’ right of first refusal was never triggered because the tenants never requested further information in advance of the sale. *Id.* at *6. The court disagreed, saying that tenants are not required to anticipate an owner’s intention to sell to avoid having their right of first refusal circumvented. *Id.* A similar theme exists in the present facts; if Crown’s interpretation were adopted, tenants’ rights to first refusal would be easily circumvented by an owner who omits notice pursuant to Section 32R(a), releases the financial information pursuant to Section 32R(b) without request and after a purchase and sale was signed, thereby defeating a need for the tenants to request the information and simultaneously closing the window by which tenants can execute their right of first refusal.

The court declines to adopt Crown’s reading of the statute and therefore Crown has failed to demonstrate that the association has failed, as a matter of law, to trigger its right of first refusal. Crown’s motion for summary judgment is **DENIED**.

The Trust’s Cross-Motion for Summary Judgment

In its motion for summary judgment, the Trust adopts Crown’s position, but also argues that, regardless of the court’s decision with regard to Crown’s argument, the association will be unable to comply with ROC’s required financing conditions. As a result, the association is unable to secure the financing required to exercise their right of first refusal. Having already

decided that Crown's motion for summary judgment must be denied, the court addresses the Trust's remaining argument.

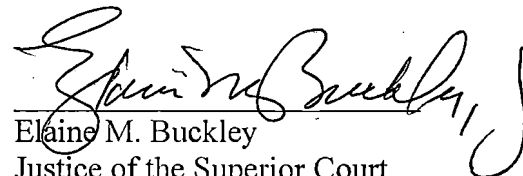
General Laws c. 140, § 32R(c) does not require the association to close on the loans; the association is merely required to obtain binding commitment letters, which it has. *Commissioner of Revenue v. Cargill, Inc.*, 429 Mass. 79, 82 (1999) (when interpreting statutes that are unambiguous, the court uses the plain language of the statute). Further, based on the record before it, the court cannot conclude that the association is unable to comply with the loan conditions as a matter of law; deposition testimony in which residents stated they did not recall signing the petition to invoke the right of first refusal does not preclude the association from satisfying the requisite resident participation to secure financing. Therefore, the Trust's motion for summary judgment must be **DENIED**.

In summary, Crown has failed to demonstrate that the association has failed, as a matter of law, to trigger its right of first refusal pursuant to G. L. c. 140D, § 32R(c). Further, the Trust has not met its burden to show that no dispute of material fact exists with regard to the association's ability to obtain financing. Therefore, Crown's motion for summary judgment and the Trust's cross-motion for summary judgment are **DENIED**.

ORDER

For the foregoing reasons, it is here by **ORDERED** that the plaintiff's motion for summary judgment is **DENIED** and the Trust's cross-motion for summary judgment is **DENIED**.

June 3, 2021


Elaine M. Buckley
Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE , ss.

**SUPERIOR COURT
DOCKET NO. 2072CV00083**

CROWN COMMUNITIES, LLC

vs.

PHILIP AUSTIN, TRUSTEE OF THE CHARLES W. AUSTIN TRUST & another¹

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER FOR JUDGMENT

I. Introduction

This controversy concerns the attempted sale of a manufactured home park (also known as a mobile home park) in Pocasset, Massachusetts, and specifically whether the park residents validly exercised their right of first refusal under the controlling statute, G. L. c. 140, § 32R, to purchase the park. On November 15, 2019, the park's owner, the Charles W. Austin Trust ("Austin Trust"), executed a purchase and sale agreement to sell the park to the plaintiff, Crown Communities, LLC ("Crown"). After the Austin Trust notified the park residents of that agreement, some of the residents formed an association, the Pocasset Park Association, Inc. ("Association"), which attempted to exercise the statutory right of first refusal and to purchase the park. In January of 2020, the Austin Trust executed a purchase and sale agreement to sell the park to the Association.

On February 20, 2020, Crown filed this action against the Association and the Austin Trust. Its verified complaint contains the following counts: breach of contract against the Austin Trust (Count I); a declaratory judgment that the Austin Trust is obligated to sell the park to Crown and not to the Association (Count II); and a claim for detrimental reliance against the Austin Trust (Count III).

¹ Pocasset Park Association, Inc.

The Association has counter-claimed against Crown and cross-claimed against the Austin Trust. The Association asserts that it is entitled to a declaratory judgment that it exercised its right of first refusal in compliance with G. L. c. 140, § 32R (Count I); and seeks a declaratory judgment that the Austin Trust unreasonably delayed the Association's ability to close on its purchase and sale agreement (Count II). The Association further alleges that Crown tortiously interfered with the Association's contract to purchase the park (Count III); that Crown committed unfair and deceptive acts in violation of G. L. c. 93A by trying to persuade park residents to withdraw their support for the Association's purchase of the park in favor of Crown's acquisition of it (Count IV); and that Crown's alleged interference with the rights of Association members to exercise the statutory right of first refusal violated the Massachusetts Civil Rights Act, G. L. c. 12, § 11H-11I ("the MCRA") (Count V). For its part, the Austin Trust, having executed separate purchase and sale agreements with both Crown and the Association, seeks a declaration as to which of those agreements is valid.

The matter was tried jury-waived on August 15-22, 2022. The court heard testimony from 15 witnesses, took 43 exhibits into evidence, and took a view of the park. Based upon the credible evidence and all the reasonable inferences fairly drawn therefrom, the court makes the following findings of fact and rulings of law.

II. Subsidiary Findings of Fact

Crown is a Wyoming limited liability company in the business of acquiring and managing manufactured housing communities. It has a principal place of business in Santa Barbara, California, and it is owned and operated by Alexander Cabot and Heath Biddlecom. The Trust acquired title to the park in about 2015. The recent past has occasioned some troubles for the park. It went into a court ordered receivership over a failed septic system and although it

is a pleasant and homey "slice of the Cape," it has fallen into some level of disrepair and has a massive and expensive backlog of deferred maintenance and requires numerous much needed upgrades. An immediate injection of capital and a more professional level of management is necessary before the park slides any further into disrepair.

On November 15, 2019, the Austin Trust and Crown entered into a purchase and sale agreement for the park (the "Crown PSA") in the amount of \$3,800,000, in an all-cash sale. The contemplated sale to Crown would not change or discontinue the use of the park. At that time, there was no homeowner's association. Paragraph 7B of the Crown PSA obligated the Austin Trust to "send the required notice (under Chapter 140 Section 32R) of such pending sale to each resident" of the park. Commencing 45 days after the last notice, Crown thereafter would have a period of 75 days to "review and to inspect or cause to be inspected all aspects of the physical and economic condition of the Subject Premises."

On November 20, 2019, the Austin Trust sent notices of the proposed sale and a copy of the Crown PSA by certified mail to the persons known by the Austin Trust to be residing in the park. Prior to that time, no statutory request for information had been made by any entity, organization, or persons eligible to do so. The information as to the recipients for the certified letter notice was derived from the rent roll maintained by Philip Austin, the trustee of the Austin Trust.

Upon receipt of the notice, several of the residents of the park became alarmed, fearing that a change would disrupt their housing situation. To be clear, this apprehension and alarm was not occasioned by any acts or omissions of Crown or its agents. Rather, in the court's judgment, some of the residents were reasonably apprehensive about the unknown. For as long as they had

resided at the park, they had been tenants of the Austin Trust, or its predecessor. Crown was completely unknown and an "outsider."

By early December of 2019, a small number of the residents had begun to meet, formally and informally, to commiserate and discuss options. Some of the residents, including Justine Shorey, were put in contact with a non-profit organization called the Cooperative Development Institute ("CDI"). CDI assists manufactured home communities in purchasing and operating their communities as cooperatives. The principal contact at CDI was Andrew Danforth. Mr. Danforth engaged with some residents to form an association cooperative and to assist them in their effort to exercise their putative statutory right of first refusal and to purchase the park.

ROC USA ("ROC") is affiliated with CDI and provides niche financing to manufactured homeowners desiring to acquire parks and become community owners. CDI provided Ms. Shorey, Ms. Robin Harris, and others a form to be used to gather park residents' signatures. This form was entitled "PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER GENERAL LAWS CHAPTER 140 SECTION 32R."

No effort was made by any of the signature gatherers to verify whether the park residents who were asked to sign the petition were owners or simply tenants, subtenants or guest residents at the park. Ms. Shorey and others gathering signatures were modestly aggressive, sometimes calling upon and visiting individual homeowners and residents many times asking that the form be signed. Some park residents were enthusiastic and readily signed, some refused to sign, and still others signed to be left alone. As will be discussed further, a small but statistically significant number of park residents signed the petition but later changed their minds.

Nora Gosselin was at all relevant times an employee of CDI. In early December of 2019, she was introduced to the park community in Pocasset. That month, Gosselin attended several

meetings on behalf of CDI at the park. She provided forms to the residents to secure resident owner signatures for the petition but did not personally participate in gathering those signatures. Gosselin testified that generally and, in this case, there would be a process to gather resident owners to sign the petition and thereafter members for the homeowner's association would be recruited.

By the end of December 2019, the small group of residents had coalesced. On December 23, 2019, some of the park's residents and owners formed the Association, a Massachusetts corporation, and elected officers. Some residents signed "Membership Agreements" to join the Association, but there was no credible evidence as to how many signed Membership Agreements were signed and collected. It is therefore unclear and unproven whether the members of the Association represented more than half of the resident owners. The Association has a functioning, well-meaning board of directors. Gosselin testified credibly that the Austin Trust cooperated fully with its obligations to the Association during the due diligence period.

CDI provided a small loan in the approximate amount of \$100,000 to the Association. There is no evidence that the loan was approved by the Association's board of directors. The Association hired Attorney Philip Lombardo using some of the loaned funds.

On January 2, 2020, Attorney Lombardo notified the Austin Trust by letter that he was writing on behalf of the "residents" purportedly trying to "exercise their statutory right of first refusal to purchase the Community." Attorney Lombardo attached to the letter a purchase and sale agreement (the "Association PSA") signed by Ms. Shorey as president of the Association and containing terms similar to the Crown PSA. One difference between the two purchase and sales agreements, however, was that the Association PSA contained a mortgage contingency clause, in contrast to the all-cash purchase contemplated in the Crown PSA. Also attached to

Attorney Lombardo's letter were several sheets of the form petition provided by CDI with various signatures on it. Attorney Lombardo stated in his letter, without further verification or explanation, that those signatures represented "at least 51% of the residents of the Community indicating a desire to move forward with the purchase." The court does not find as a matter of fact that the representation was accurate. It is thus unproven.

There is no credible evidence that a majority of the members of the Association approved the Association PSA signed by Ms. Shorey or even knew of its terms. The evidence left considerable doubt that many members outside of the Association's board of directors have ever seen or read the Association PSA to this day.

The court finds that the petition did not contain valid signatures of at least 51% of the resident owners of the park. That is, the Association has not met its burden of proof. At the time, there were 81 units in the park. Each unit gets one vote. The required vote therefore needed to be forty-one (41) signatures or more. A total of forty-nine (49) purported to sign. A total of four (4) votes were duplicates, meaning that more than one person signed for a particular unit. A total of five (5) signatures were of subtenants who were residents but not owners on the units. A total of five signatures were owners but not residents.

The number of purportedly valid signatures was further diluted because on January 30 and February 1, 2020, a total of four owner residents (McDonald, Bernard, Harris, and Strehle) freely rescinded their prior approval and withdrew. Ms. Shorey, the president of the Association and the principal organizer of the Association's efforts to purchase the park, was not able to verify credibly under oath that at least forty-one resident owners of the 81 units in the park "joined the effort" to purchase the park. There was not otherwise any credible evidence that at least forty-one resident owners signed.

On January 7, 2020, based upon inaccurate legal advice, Philip Austin, as trustee of the Austin Trust, and Lila Austin, as beneficiary, signed the purchase and sale agreement ("the Association PSA") to sell the park to the Association and sent the signed Association PSA back to Attorney Lombardo.

The Austin Trust informed Crown of the situation. The court infers that Crown sought legal advice. Thereafter, Crown sent letters to park residents and Crown representatives personally went to the park and began speaking to residents. Some park residents had previously signed the petition and thereby indicated a desire to move forward with the Association's purchase of the park.

There is no credible evidence that the tactics or efforts of Crown and its agents were illegal, unfair, or deceptive in any way. Crown's visits were purely informational. The court rejects the Association's position that Crown engaged in "scare tactics" or acted wrongfully or illegally in any way. No more or less pressure tactics were used by the Crown representatives than had previously been employed by the residents affiliated with CDI and purporting to act on behalf of the Association. Crown's agents were advocating for their position and attempting, with varying success, to convince residents that Crown was a better option for them than a cooperative ownership arrangement. The court does not find that Crown used any type of coercive pressure, intimidation tactics, or threats on the residents. Crown used bona fide efforts to educate and persuade park residents that the Crown option was more beneficial to them.

The Crown representatives asked various owner residents to rescind or withdraw their earlier approval of the decision to proceed with the first refusal rights. There was nothing misleading, untruthful, or immoral about Crown's efforts to persuade residents to withdraw their support from the Association's efforts to purchase the park. Some residents agreed and withdrew

support for the Association's efforts, while others did not. The court finds that these withdrawals were all freely executed without duress or pressure. Those residents who changed their minds, are all intelligent, reasonable people who thought deeply about the issues and came to a different conclusion than they had reached in late 2019, and individually determined that Crown owning and operating the park would be in their best interests. Likewise, those that elected to proceed to attempt to purchase the park through the Association are all intelligent reasonable people as well. This is a small community, and everyone acted in their own best interests in good faith.

On February 20, 2020, Crown filed this lawsuit. The court credits the testimony of Crown's President, Alexander Cabot, that the sole and exclusive purpose of the lawsuit was to enforce Crown's contractual right to purchase the property. Crown's actions in filing the lawsuit were core petitioning activities, nothing less or more. Parties like Crown with legitimate legal disputes are entitled to seek redress and a remedy in our courts.

The court heard testimony from Joseph Hogan, who conducted a property condition assessment of the park in February 2020. The court finds that Mr. Hogan lacks the expertise to provide reliable figures for actual construction work to be done at the property. He did not demonstrate or even claim any expertise in this area. His report (Exhibit 43) is full of caveats that actual construction figures should be sought from construction professionals. Both his opinions from 2020 as to construction cost estimates and his subsequent highly generalized opinion regarding the increase in these costs since then are unreliable and not credible.

III. Ultimate Findings of Fact and Rulings of Law

A. General Right of First Refusal Principles

"A right of first refusal is not an option to purchase property at a certain price, but a limitation on the owner's ability to dispose of property without first offering the property to the holder of the right at the third party's offering price."

Uno Restaurants, Inc. v. Boston Kenmore Realty Corp., 441 Mass. 376, 382 (2004); *Frostar Corp. v. Malloy*, 63 Mass. App. Ct. 96, 103 (2005). "The owner's obligation under a right of first refusal is to provide the holder of the right seasonable disclosure of the terms of any bona fide third-party offer." *Uno Restaurants, Inc.*, 441 Mass. at 382-383. "On notice of receipt of a bona fide offer from a third party, a right of first refusal ripens into an option to purchase according to its terms." *Greenfield Country Estates Tenants Ass'n., Inc. v. Deep*, 423 Mass. 81, 89 (1996); *Frostar Corp.*, 63 Mass. at 103. "[An] option to purchase . . . is an irrevocable offer by the [property title holder] to the [ultimate purchaser] to sell to him on the terms stated." *Kelley v. Ryder*, 276 Mass. 24, 26-27 (1931). The exercise of an option to purchase constitutes an acceptance of the "irrevocable offer" that the option represents. *Stapleton v. Macchi*, 401 Mass. 725, 729 n.6 (1988).

B. Statutorily Required Notice and Right of First Refusal for Sales of Manufactured Housing Parks

1. Statutory Notice Provisions

Before a manufactured housing community or park may be sold, the park owner must provide notice and, where certain conditions have been met, a right of first refusal under G. L. c. 140, § 32R. Section 32R(a) mandates that the owner of a manufactured housing community

"shall give notice to each resident . . . of any intention to sell . . . all or part of the land on which the community is located for any purpose. Such notice shall be mailed by certified mail . . . within fourteen days after the date on which any advertisement, listing, or public notice is first made that the community is for sale . . . and, in any event, at least 45 days before the sale . . . occurs; provided, that such notice shall also include notice of tenants' rights under this section."

Because the Austin Trust gave notice to each resident of the Crown PSA at least 45 days before the sale, which sale has not occurred, the Association cannot show that the Austin Trust failed to comply with the notice requirement in § 32R(a).

The parties next debate what notice the Austin Trust was required to give park residents under § 32R(b). The requisite notice depends upon whether the sale would result in a change of use of the park or not. Pursuant to § 32R(b), before a manufactured housing community may be sold for any purpose that would result in a change of use or discontinuance,

"the owner shall notify each resident of the community . . . of any bona fide offer for such a sale . . . that the owner intends to accept. Before any other sale . . . the owner shall give each resident such a notice of the offer only if more than fifty percent of the tenants residing in such community or in an incorporated homeowners' association or group of tenants representing more than fifty percent of the tenants residing in such community notifies the . . . owner. . . that such persons desire to receive information relating to the proposed sale"

"Before any other sale" refers to a sale which would *not* result in a change of use or discontinuance, as is the case here. Therefore, the Austin Trust was required to give each resident notice of Crown's offer to purchase the park *if* the Austin Trust received notice of a request for such information from (1) more than 50% of the tenants residing in the park, or (2) more than 50% of an incorporated homeowners' association or group of tenants representing more than 50% of the tenants residing in the park. See § 32R(b)

There is no evidence that the Austin Trust ever received a request from any of these categories of tenants or a homeowners' association for information relating to a bona fide offer for the sale of the park. Instead, the only request made by any such entity was the Association's January 2, 2020, letter with the Association PSA and the signed petition. The January 2nd communication was not a request under § 32R(b) (as by that time, the Austin Trust had disclosed the Crown PSA to park residents) but was an effort to assert a right to purchase the park under § 32R(c). It follows that the Austin Trust did not violate the notification requirements of § 32R(b). That does not, however, defeat the Association's ability to exercise a right to purchase the park.

2. Statutory Right to Purchase Provisions

General Laws c. 140, § 32R(c), provides that a group or association of residents

"representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase . . . the said community . . . provided it (1) submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement . . . on substantially equivalent terms and conditions within 45 days of receipt of notice of the offer made under subsection (b) of this section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement . . . and (4) closes on such purchase . . . within an additional 90 days after the end of the 90 day period under clause (3)."

Therefore, for the Association to have a right to purchase the park in accordance with § 32R(c), the Association must have: (1) represented at least 51% of the manufactured home owners residing in the community; (2) given the Austin Trust reasonable evidence that at least 51% of the occupied homes in the park approved the Association's purchase of the park; (3) submitted to the Austin Trust a proposed purchase and sale agreement with substantially the same terms as the Crown PSA; (4) obtained a financing commitment within 90 days of executing the PSA; and (5) closed on the purchase within a certain period. Of these elements, the first and second are dispositive.²

With respect to the first element, there is no credible evidence that the Association represents at least 51% of the park's owner residents. The Association submitted no credible evidence as to how many signed Membership Agreements were collected and whether they were signed by resident owners. Therefore, the Association has not proven that it even had authority under § 32R(c) to assert a right to purchase the park. See § 32R(c).

² The court need not reach the issue raised belatedly by Crown of whether the Association satisfied the 90-day finance commitment deadline.

As a result, it matters less whether the Association met its burden on the second element by submitting to the Austin Trust reasonable evidence that at least 51% (at least 41 of the 81) of the occupied homes in the park approved of the Association's purchase of the park. The court notes, however, that the Association does not dispute that those signatures must be of resident owners. Of the 49 signatures originally submitted, only 35 were resident owners. Of those 35 resident owners, four later rescinded their approval for the Association to purchase the park, leaving the total number of resident owners in favor of the Association's purchase down to 31.

Under any view of the credible evidence, the Association did not successfully exercise its right of first refusal pursuant to G. L. c. 140, § 32R. Because the Association did not lawfully exercise its right of first refusal pursuant to G. L. c. 140, § 32R, the purchase and sale agreement executed between it and Austin Trust is not valid.

C. The Association's Remaining Claims

The invalidity of the Association PSA and the absence of any evidence that the Crown PSA is defective compels the conclusion that the purchase and sale agreement executed between the Austin Trust and Crown is valid. Furthermore, because the defect underpinning the Association PSA was the Association's noncompliance with G. L. c. 140, § 32R, the Association cannot prevail on its claim that the Austin Trust unreasonably delayed the ability of the Association to close on its purchase and sale agreement.

The Association's counterclaims against Crown fail for related reasons. The Association complains that Crown is liable for tortious interference with the Association PSA with the Austin Trust. To prevail on its claim of tortious interference with a contract, the Association must establish that it had a valid contract with the Austin Trust; that Crown knowingly induced the Austin Trust to break that contract; that Crown's interference was intentional and improper in

motive or means; and that the Association was harmed by Crown's actions. See *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 715-716 (2011). Fatal to this claim is the Association's inability to establish the core element, the validity of its PSA with the Austin Trust, or that acts or omissions by Crown caused harm to the Association. Therefore, Crown is entitled to judgment on the Association's counterclaim for tortious interference with a contract.

Nor has the Association proven that Crown violated G. L. c. 93A. As found above, Crown spoke directly with park residents during informational visits and exerted no more pressure than that employed by CDI. Crown did not provide misleading information to park residents and used bona fide efforts to inform and persuade some park residents to withdraw their support from the Association's efforts to purchase the park. In sum, there was no credible evidence that Crown or its agents engaged in any unfair or deceptive practices. Consequently, the Association is not entitled to judgment on its counterclaim against Crown for violation of G. L. c. 93A.

The Association's final claim is that Crown violated the MCRA by intimidating and coercing park residents into withdrawing their support for the Association's purchase of the park, and thereby interfering with the Association's right of first refusal to purchase the park. To prevail on its MCRA claim, Association had to prove that Crown interfered with or attempted to interfere with the Association's exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth through the use of threats, intimidation or coercion. See *Swansea Dev. Corp. v. Taunton*, 423 Mass. 390, 395 (1996).

"Threat . . . involves the intentional exertion of pressure to make another fearful or apprehensive of injury or harm Intimidation involves putting in fear for the purpose of compelling or deterring conduct . . . [and coercion] is the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done."

Planned Parenthood League of Massachusetts v. Blake, 417 Mass. 467, 474 (1994) (internal citations and quotations omitted).

As explained above, Crown did not engage in any coercive, threatening, or intimidating conduct when its agents informed park residents of the benefits of Crown's ownership of the park and the risks of the Association's ownership of the park. As a result of Crown's legitimate, bona fide efforts, some park residents withdrew their signatures from the Association's petition. The Association lacked sufficient support (and authority) to exercise lawfully its right of first refusal and to purchase the park. The Association has not proven that Crown used intimidation, coercion, or threatening tactics or that it interfered with the rights of the Association. Crown is, therefore, entitled to judgment on the Association's MCRA counterclaim.

ORDER

For the foregoing reasons, it is **DECLARED** and **ADJUDGED** that

(1) the Pocasset Park Association, Inc. did not lawfully exercise a statutory right of first refusal pursuant to G. L. c. 140, § 32R (Count I of Pocasset Park Association, Inc.'s counterclaim against Crown Communities, LLC and crossclaim against Philip Austin, as Trustee of the Charles W. Austin Trust);

(2) the purchase and sale agreement, which was executed between Philip Austin, as Trustee of the Charles W. Austin Trust, and Crown Communities, LLC is valid and enforceable (crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.);

(3) the purchase and sale agreement executed between Philip Austin, as Trustee of the Charles W. Austin Trust and Pocasset Park Association, Inc. is not valid or enforceable

(crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.);


(4) Philip Austin, as Trustee of the Charles W. Austin Trust, is obligated to sell Pocasset Park to Crown Communities, LLC, and not to Pocasset Park Association, Inc. (Count II of Crown Communities, LLC's complaint); and

(5) Pocasset Park Association, Inc. has not proven that Philip Austin, as Trustee of the Charles W. Austin Trust, unreasonably delayed the ability of Pocasset Park Association, Inc. to close on its purchase and sale agreement (Count II of Pocasset Park Association, Inc.'s cross-claim against Philip Austin, as Trustee of the Charles W. Austin Trust).

It is **ORDERED** that judgment shall enter in favor of Crown Communities, LLC and against Pocasset Park Association, Inc. on the latter's counterclaims that Crown Communities, LLC: (1) tortiously interfered with Pocasset Park Association, Inc.'s contract to purchase Pocasset Park (Count III), (2) violated G. L. c. 93A (Count IV), and (3) violated the Massachusetts Civil Rights Act (Count V).

It is further **ORDERED**, consistent with the prayers for relief of Crown Communities, LLC that its claims against Philip Austin, as Trustee of the Charles W. Austin Trust, for breach of contract (Count I) and detrimental reliance (Count III) are **MOOT**.

No party shall be entitled to costs.


MICHAEL K. CALLAN
Justice of the Superior Court

DATE: December 28, 2022

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
DOCKET NO. 2072CV00083

CROWN COMMUNITIES, LLC

vs.

PHILIP AUSTIN, TRUSTEE OF THE CHARLES W. AUSTIN TRUST & another¹

**DECISION AND ORDER ON
POCASSET PARK ASSOCIATION, INC.'S RULE 59(e) MOTION**

The defendant, Pocasset Park Association, Inc. (the Association), has moved pursuant to Mass. R. Civ. P. 59(e) to alter or amend the judgment in favor of the plaintiff, Crown Communities, LLC (Crown). The Association challenges the court's findings and rulings underpinning the ultimate conclusion that Crown, and not the Association, executed a valid agreement to purchase a manufactured home park from the defendant, Philip Austin, Trustee of the Charles W. Austin Trust (the Austin Trust). For the reasons explained below, the Association's rule 59(e) motion is ***DENIED***.

Under G. L. c. 140, § 32R(c), the Association would have had a right to purchase the park from the Austin Trust if, *inter alia*: (1) the Association represented at least 51% of resident owners who were entitled to notice under G. L. c. 140, § 32R(b); (2) the Association submitted to the Austin Trust reasonable evidence that the residents of at least 51% of the occupied homes in the park approved of the Association's proposed purchase of the park; and (3) the Association gave the Austin Trust a proposed purchase and sale agreement (PSA) on "substantially equivalent terms and conditions" as those set forth in the Crown PSA.

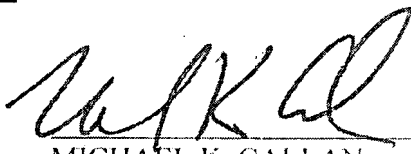
¹ Pocasset Park Association, Inc.

The evidence at trial was insufficient to show that the Association satisfied all of these requirements. On January 2, 2020, the Association notified the Austin Trust that it was exercising its claimed right to purchase the park. It attached to that notice the Association PSA and several signed petition sheets which, according to the Association's attorney in that notice, represented "at least 51% of the residents of the Community indicating a desire to move forward with the purchase."

The Association did not provide any documentation to the Austin Trust showing that on January 2, 2020, the Association had a right to purchase the park because its membership represented at least 51% of resident owners. Nor did the Association, on January 2, 2020, give the Austin Trust "reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community had approved the [Association's proposed] purchase of the community." The pages of the signed petition were not submitted with any verification, even so much as a brief sworn statement by its attorney, to support the bare assertion that at least 51% of the residents supported the Association's purchase of the park. The trial evidence did not cure these defects. The Association's membership list as of February 28, 2020, did not prove that two months earlier, on January 2, 2020, the Association represented at least 51% of resident owners and had authority to exercise a right to purchase the park. See § 32R(c).

ORDER

For the foregoing reasons, Pocasset Park Association, Inc.'s Motion to Alter or Amend Judgment Pursuant to Mass. R. Civ. P. 59(e) is **DENIED**.


MICHAEL K. CALLAN
Justice of the Superior Court

3-10-23

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

23-P-580

Appeals Court

CROWN COMMUNITIES, LLC vs. PHILIP AUSTIN, trustee,¹ & another.²

No. 23-P-580.

Barnstable. April 17, 2024. – December 3, 2024.

Present: Vuono, Rubin, & Walsh, JJ.

Manufactured Housing Community. Real Property, Right of first refusal. Lis Pendens. Contract, Interference with contractual relations. Consumer Protection Act, Unfair act or practice. Civil Rights, Coercion. Practice, Civil, Findings by judge, Judgment, Motion to amend. Judgment, Amendment.

Civil action commenced in the Superior Court Department on February 20, 2020.

The case was heard by Michael K. Callan, J., and a motion to alter or amend the judgment was considered by him.

Thomas W. Aylesworth for Pocasset Park Association, Inc.
Walter B. Sullivan for the plaintiff.
Ellen J. Peterson, Assistant Attorney General, for the Attorney General, amicus curiae, submitted a brief.

¹ Of the Charles W. Austin Trust.

² Pocasset Park Association, Inc.

VUONO, J. The primary issue raised in this appeal is whether the resident owners of manufactured housing units in a manufactured housing community (park) validly exercised their statutory right of first refusal to purchase the land on which the park is situated. See G. L. c. 140, § 32R (c). As we discuss in more detail below, the plaintiff, Crown Communities, LLC (Crown Communities), entered into a purchase and sale agreement to buy the park from defendant Philip Austin, as trustee of the Charles W. Austin Trust (trust). When some park residents learned of the proposed sale, they formed an association, defendant Pocasset Park Association, Inc. (association), to exercise their statutory right of first refusal. The association submitted a purchase and sale agreement to Austin, as trustee, who, on the advice of an attorney, executed the purchase and sale agreement with the association.

To determine which purchase and sale agreement was valid, Crown Communities brought a declaratory judgment action against the trust and the association.³ The association counterclaimed for tortious interference with contractual relations, violation of G. L. c. 93A, and violation of the Massachusetts Civil Rights

³ Crown Communities also asserted claims against the trust for breach of contract and detrimental reliance. Those claims are not at issue in this appeal.

Act, G. L. c. 12, §§ 11H, 11I (MCRA), and also requested a declaratory judgment.⁴ Following a jury-waived trial, a Superior Court judge concluded that the association did not validly exercise its statutory right of first refusal and issued a declaratory judgment in favor of Crown Communities. The trial judge reasoned that (1) the association did not represent the requisite number of the park's resident owners and (2) the requisite number of resident owners did not support the association's purchase of the park. The judge also found in favor of Crown Communities on the association's counterclaims.

Thereafter, the association filed a motion to amend the judgment, asserting that the judge's analysis of whether the association validly exercised its statutory right of first refusal was flawed because he imposed an improper heightened burden on the association and committed a mathematical error in calculating how many resident owners supported the association's purchase of the park. The judge denied the motion, and the association appealed from the judgment and the order on the motion to amend. We affirm in part, vacate in part, and remand.⁵

⁴ The trust also filed a counterclaim requesting a declaratory judgment.

⁵ We note that the trust has not filed a brief in this appeal. We also acknowledge the amicus letter of the Massachusetts Office of the Attorney General.

Background. 1. Statutory background. "[M]anufactured housing communities provide a viable, affordable housing option to many elderly persons and families of low and moderate income" (citation omitted). Blackman's Point Homeowners' Ass'n, Inc. v. Call, 103 Mass. App. Ct. 711, 713 (2024). However, renting land and placing a manufactured housing unit in a manufactured housing community also comes with risks. See id. Because manufactured housing units often cannot be relocated, the residents of a manufactured housing community are "at the peril of their landlord[]" should their landlord or a subsequent purchaser of the land decide to discontinue the community. Greenfield Country Estates Tenants Ass'n v. Deep, 423 Mass. 81, 86 (1996). "To protect this vulnerable community, the Legislature enacted the Manufactured Housing Act, G. L. c. 140, §§ 32A-32S [act]," Blackman's Point Homeowners' Ass'n, Inc., supra, which "enables residents of manufactured housing communities to purchase the land on which their homes exist" through a right of first refusal, Greenfield Country Estates Tenants Ass'n, supra.

The act includes provisions specifying when and how an owner must give notice to residents of the intention to sell, see G. L. c. 140, § 32R (a), and when and how an owner must give notice to residents of a bona fide offer, see G. L. c. 140, § 32R (b). The act then provides that "[a] group or association

of residents representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase . . . the said community for purposes of continuing such use thereof, provided" that the group or association satisfies certain criteria. G. L. c. 140, § 32R (c).⁶ The group or association must

"(1) submit[] to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submit[] to the owner a proposed purchase and sale agreement or lease agreement on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under subsection (b) of this section, (3) obtain[] a

⁶ With respect to a sale that will not result in a change of use or discontinuance, an owner must provide notice of a bona fide offer under paragraph (b) "only if more than fifty percent of the tenants residing in such community or an incorporated home owners' association or group of tenants representing more than fifty percent of the tenants residing in such community notifies the . . . owner . . . , in writing, that such persons desire to receive information relating to the proposed sale." G. L. c. 140, § 32R (b). Crown Communities argues that the association did not request information related to the proposed sale and that, accordingly, the association was not entitled to notice under paragraph (b) and did not have the statutory right of first refusal. This argument disregards certain critical facts. In particular, the trust did not provide notice of the intention to sell, as required by § 32R (a), and instead skipped to providing notice of a bona fide offer under § 32R (b). In these circumstances, it would be illogical for us to conclude that the association, which was not formed until December 23, 2019, had to request information related to the proposed sale -- a sale that the residents knew nothing about until receiving notice under § 32R (b) -- to be entitled to that very notice. Accordingly, to the extent this argument is preserved, we reject it.

binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement or lease, and (4) close[] on such purchase or lease within an additional ninety days after the end of the ninety-day period under clause (3)."

Id. At trial, the parties agreed that clause (1) required the association to submit to the trust reasonable evidence that the resident owners of at least fifty-one percent of the occupied homes in the park approved the purchase of the park by the association.⁷ While this interpretation reads a word into the act that is not there, whether the parties' interpretation is correct is not before us given their agreement, and we take no position on whether they are correct. See Smith v. Smith, 5 Mass. App. Ct. 874, 874 (1977) (issue expressly waived below was not before court on appeal).

2. Factual background. We summarize the relevant facts as found by the judge, supplemented where necessary by undisputed documentary evidence. The park is a manufactured housing community located in the town of Bourne, in a section known as Pocasset. The park is owned by the trust and managed by Austin, who testified that, among other duties, he provides routine maintenance, collects the rent, and maintains the rent roll. On

⁷ In other words, the parties agreed that subtenants who did not own their manufactured housing units were excluded from the calculation, and that owners who were not residents were also excluded.

November 15, 2019, Crown Communities, a limited liability company that is in the business of acquiring and operating manufactured housing communities, entered into a purchase and sale agreement to buy the park from the trust for \$3.8 million in cash. Crown Communities planned to continue operating the park as a manufactured housing community, and the sale was not going to result in a change of use or discontinuance. On November 20, 2019, the trust sent notice of the proposed sale, including a copy of the purchase and sale agreement, to the persons known by the trust to be residing in the park.

Upon receiving the notice, several park residents became alarmed and began to meet to discuss options. By the end of December 2019, a group of residents had coalesced, began to receive assistance from the Cooperative Development Institute, Inc. (CDI), a nonprofit organization that assists manufactured housing communities in acquiring and operating their communities as cooperatives,⁸ and formed the association. Around that time, some residents, with assistance from CDI, began to ask other residents to (1) sign membership agreements to join the association and (2) sign a petition to invoke the right of first

⁸ Among other things, CDI assisted the association with obtaining a \$100,000 loan through an affiliated lender, ROC USA, and some of the loan proceeds were used to hire legal counsel.

refusal.⁹ On January 2, 2020, an attorney for the association sent a letter to Austin, as trustee, representing that (1) park residents, through the association, were exercising their statutory right of first refusal and (2) an attached petition contained "signatures of at least [fifty-one percent] of the residents of the [park] indicating a desire to move forward with the [association's] purchase." The attorney also attached a proposed purchase and sale agreement to the letter. Unlike Crown Communities's purchase and sale agreement, the association's purchase and sale agreement contained a mortgage contingency. Five days later, on January 7, 2020, Austin, as trustee, executed the purchase and sale agreement with the association on the advice of an attorney and notified Crown Communities of that fact.

Subsequently, when Crown Communities learned of the association's attempted exercise of the statutory right of first refusal, it began to send letters to park residents and to visit and speak with residents to win their support. Among other

⁹ The judge found that there was "no credible evidence" regarding how many membership agreements were signed or collected. With regard to the petition, the judge found that no effort was made "to verify whether the park residents who were asked to sign the petition were owners or simply tenants, subtenants or guest residents at the park." The judge also found that the persons "gathering signatures were modestly aggressive."

things, Crown Communities specifically asked residents to withdraw their support from the association. While the judge did not make detailed findings regarding any specific statements that Crown Communities made to any residents, documentary evidence shows that Crown Communities sent a letter to some residents stating that they would lose rent control protection if the association purchased the park and offering gift cards and a "Crown Guarantee," which included financial incentives, to residents who signed an enclosed form stating that they wanted Crown Communities, not the association, to purchase the park.¹⁰ Around the time that Crown Communities was visiting and speaking with residents, it also commenced this action.

Discussion. 1. The statutory right of first refusal. As noted, the question before us is whether the association validly exercised its statutory right of first refusal.¹¹ Because the judge made various errors of law and a mathematical error in calculating the number of resident owners who supported the

¹⁰ The managing partner of Crown Communities testified that the gift cards and Crown Guarantee were not part of a quid pro quo, but the letter stated, "When we receive your signed form, we will provide you a [fifty dollar] gift card," and "Please note, in order for you to obtain the incentives listed in the 'Crown Guarantee' and for it to be applicable you need to sign and return the enclosed document."

¹¹ The parties agreed at trial that the association had the burden to establish that it met the requirements to exercise its statutory right of first refusal.

association's purchase of the park, we cannot answer that question. Instead, we must vacate the judgment and, as we explain more fully below, remand the case for the judge to make findings on issues not previously addressed and to reconsider other findings in light of the standards we set forth below.¹² See, e.g., South Boston Elderly Residences, Inc. v. Moynahan, 91 Mass. App. Ct. 455, 467 (2017) (in jury-waived trial, remanding for reconsideration where judge's findings may have been based on incorrect legal standard). See also, e.g., Bruno v. Alliance Rental Group, LLC, 103 Mass. App. Ct. 170, 173 n.5 (2023) (similar).

The judge focused on two requirements of G. L. c. 140, § 32R (c): (1) whether the association represented fifty-one percent of the resident owners who were entitled to notice and (2) whether the association submitted to the trust reasonable evidence that the resident owners of at least fifty-one percent of the occupied homes in the park approved the purchase of the park by the association. On these points, the association's evidence included the petition signed by park residents.

¹² "On review of a jury-waived proceeding, we accept the judge's findings of fact unless they are clearly erroneous. . . . We review the judge's rulings on questions of law de novo." U.S. Bank Nat'l Ass'n v. Schumacher, 467 Mass. 421, 427 (2014).

In addressing the first issue, the judge did not consider the petition and instead looked to how many signed membership agreements the association had collected. He found that there was "no credible evidence" as to how many signed membership agreements the association had collected or whether they were signed by resident owners versus residents. Based on his findings regarding the signed membership agreements, the judge concluded that there was no credible evidence that the association represented fifty-one percent of the resident owners. The judge erred in this regard by conflating (1) whom the association represented with (2) who was a member of the association. The act requires that a group or association represent fifty-one percent of a manufactured housing community's resident owners, not that fifty-one percent of a manufactured housing community's resident owners be members of the group or association. See G. L. c. 140, § 32R (c).¹³ See Chin v. Merriot, 470 Mass. 527, 537 (2015) (we do not read into statutes provisions that Legislature did not see fit to include). The judge did not make a finding on the pertinent question whether the association represented fifty-one percent

¹³ This error effectively added a new requirement to the statute.

of the resident owners, and we remand for findings on that question. See n.17, infra.

In addressing the second issue, whether the association submitted to the trust reasonable evidence that the requisite number of resident owners supported the association's purchase of the park, the judge did consider the petition but made other errors. The first error was a mathematical one. The judge found that there were eighty-one units in the park and therefore the association needed signatures from forty-one resident owners. He then found that the petition contained forty-nine signatures. Of the forty-nine signatures that the judge counted, he found that only thirty-five were from resident owners and that four of those thirty-five later rescinded their signatures, reducing the total number of resident owners in favor of the purchase to thirty-one.¹⁴ Consequently, the judge concluded that the association had not met its burden of proof. However, the judge erred when he found that the petition contained forty-nine signatures. In fact, the petition contained sixty-one signatures.

¹⁴ The judge did not explain on what basis a rescission could be effective under the statute after the purchase and sale agreement was signed, but for purposes of this appeal, we will assume without deciding that it could be effective.

The association noted this discrepancy in a motion to amend the judgment.¹⁵ Without addressing his mathematical error, the judge denied the motion on the ground that "the pages of the signed petition were not submitted with any verification, even so much as a brief sworn statement by its attorney, to support the bare assertion that [fifty-one percent] of the residents supported the [a]ssociation's purchase of the park." However, neither verification nor a sworn statement is required. This was the second error.

As the Attorney General argues in her amicus letter, nothing in the act required the association to submit verification with the petition. The act required the association to submit "reasonable evidence" to the trust. G. L. c. 140, § 32R (c). "Reasonable evidence" includes "a document signed by such persons." 940 Code Mass. Regs. § 10.09(3)(a) (1996). The Attorney General has taken the position that "[t]he burden is intended to be low" and that the judge imposed an improper heightened standard in requiring the association to submit verification with the petition. We agree with her

¹⁵ We review an order on a motion to amend a judgment for abuse of discretion. See Gannett v. Shulman, 74 Mass. App. Ct. 606, 615 (2009). Here, where the judge's order on the motion to amend the judgment did not resolve the issues with the judgment, we must vacate the order and remand for further consideration.

interpretation of the statute, which is entitled to deference.¹⁶ See Blake v. Hometown America Communities, Inc., 486 Mass. 268, 273 (2020). Nothing in the act required the association to submit verification with the petition, and we will not read that requirement into the act. See Chin, 470 Mass. at 537. Accordingly, on remand the judge must reconsider his findings on whether the association submitted to the trust reasonable evidence that the requisite number of resident owners supported the association's purchase of the park.¹⁷

¹⁶ More specifically, the Attorney General argues as follows. "The Regulations . . . state that '"reasonable evidence . . ." shall include, without limitation, a document signed by such persons[,] 940 [Code Mass. Regs. §] 10.09(3)(a)," and notes that the Supreme Judicial Court has equated a "reasonable evidence" standard with the "substantial evidence" standard, arguing, "[i]t is a particularly low standard to meet, as it is less burdensome than a preponderance of the evidence. Lisbon v. Contributory Ret. Appeal Bd., 41 Mass. App. Ct. 246, 257 (1996)." The Attorney General adds that "[n]othing in the plain text of the Statute or the Regulations suggests that a signed petition must be verified, attested to, or further explained in order to constitute evidence which a 'reasonable mind might accept as adequate.' Med[ical] Malpractice Joint Underwriting Ass'n of Mass. [v. Commissioner of Ins.], 395 Mass. [43,] . . . 55 [1985]. On the contrary, 940 [Code Mass. Regs. §] 3.09(3)(a) provides that the universe of what may constitute 'reasonable evidence' is 'without limitation.' And indeed, the example given in the Regulations as something that reasonable evidence 'shall include' is 'a document signed by the residents' -- nothing more. 940 [Code Mass. Regs. §] 3.09(3)(a)."

¹⁷ At this stage, we do not decide whether the petition satisfied the association's requirement of submitting to the trust reasonable evidence that the requisite number of resident

Crown Communities argues that we should nonetheless affirm on two separate alternative bases: the association (1) did not submit "a proposed purchase and sale agreement or lease agreement on substantially equivalent terms and conditions" or (2) "obtain[] a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement or lease." G. L. c. 140, § 32R (c).

The first argument by Crown Communities is based only on the fact that its purchase and sale agreement did not contain a mortgage contingency while the association's did. Relying on Christian v. Edelin, 65 Mass. App. Ct. 776, 779 (2006), Crown Communities argues that it is established law that an offer with a mortgage contingency is never on substantially equivalent terms and conditions as a cash offer. We are not persuaded.

owners supported the association's purchase of the park. Given the judge's erroneous undercounting of the total number of signatures on the petition submitted by twelve, we are hard pressed to imagine a scenario in which the judge could conclude on this evidence that the association did not meet its burden. Nonetheless, findings of fact must be made by the trial judge in the first instance. If the association has met this burden, it will also have met its burden with respect to who it represents. The Legislature cannot have meant to allow a competing putative purchaser to disrupt the right of first refusal, which requires only reasonable evidence about residents prior to the sale, by showing that, despite such evidence, the association did not, under some higher standard, in fact represent the requisite number of owner residents.

Christian involved a different standard: whether an offer with a mortgage contingency was on "substantially the same terms and conditions" as a cash offer (citation omitted). Id. Given that the right of first refusal is given to a group of generally low to moderate income individuals in order to allow them to protect their homes even when a third-party purchaser might be able to make more money converting the park to another use, financing is virtually always likely to be necessary to exercise the right of first refusal. The inclusion of a mortgage contingency to a purchase and sale agreement by an association where the bona fide offer is for cash does not take it outside the universe of offers "on substantially equivalent terms and conditions" within the meaning of the statute. G. L. c. 140, § 32R (c).

As to the deadlines in the statute, before they were reached, Crown Communities recorded a memorandum of lis pendens with respect to the property. As the association argues, and as we have held in analogous situations, a party who takes such an action, the purpose of which is precisely to hamper the sale of the property and the ability to obtain financing for it, will not be heard to complain that the statutory deadlines for those actions were not complied with. Cf. Augis Corp. v. Massachusetts Comm'n Against Discrimination, 75 Mass. App. Ct. 398, 406 (2009) ("A party that frustrates, innocently or otherwise, another party's ability to comply with a discovery

deadline has an obligation to cooperate in repairing the damage and cannot with impunity seek to capitalize on the problems its own conduct created"); Winchester Gables, Inc. v. Host Marriott Corp., 70 Mass. App. Ct. 585, 596 (2007) ("[o]ne who prevents the performance of a contract cannot take advantage of its nonperformance" [citation omitted]).

2. The association's counterclaims. The association also argues error in the judgment in favor of Crown Communities on the association's counterclaims for intentional interference with contractual relations, violation of G. L. c. 93A, and violation of the MCRA.¹⁸

a. Intentional interference. On the association's intentional interference counterclaim, the judge relied on his finding that the association did not validly exercise its statutory right of first refusal to conclude that the association did not have a purchase and sale agreement with which Crown Communities interfered. Given the vacatur on the issue of whether the association validly exercised its statutory right of first refusal, we must also vacate the judgment on the

¹⁸ To the extent the association argues that the judgment on these counterclaims must be reversed because all three counterclaims were supported by evidence that Crown Communities filed a "frivolous" declaratory judgment action, the argument is not persuasive. To the contrary, the record shows that there was a good faith dispute over whether the association validly exercised its statutory right of first refusal.

association's intentional interference counterclaim and remand for further consideration.¹⁹

b. Violation of G. L. c. 93A. With respect to the association's counterclaim for violation of G. L. c. 93A, the association contends that Crown Communities engaged in unfair or deceptive acts or practices to entice park residents to withdraw their support from the association. Among other things, the association contends that (1) Crown Communities misled residents into thinking they would lose rent control protections if the association purchased the park, when the residents had no such protections in the first place,²⁰ and (2) Crown Communities engaged in other unfair practices such as bribery. In support of these allegations, the association introduced documentary

¹⁹ Nor can we affirm the judgment on the association's intentional interference counterclaim on the alternative basis that Crown Communities did not act with improper motive or means. See Psy-Ed Corp. v. Klein, 459 Mass. 697, 715 (2011) (claim for intentional interference requires proof of interference by improper motive or means). As we explain in our discussion of the association's counterclaim for violation of G. L. c. 93A, there is an open question regarding whether Crown Communities interfered by improper means.

²⁰ As a general matter, rent control does not exist in Massachusetts. See Quinn v. Rent Control Bd. of Peabody, 45 Mass. App. Ct. 357, 375-378 (1998) (describing history of rent control). While there are some exceptions to this rule that permit cities and towns to adopt rent control ordinances for manufactured housing communities, see id. at 376-377, it is undisputed that the town of Bourne has not adopted any such ordinances.

evidence described above showing that Crown Communities (1) warned residents that they would lose rent control protections and (2) promised financial incentives for those who "sign[ed] and return[ed] the enclosed document stating that [they] would like Crown Communities to purchase the [p]ark."

Without addressing the association's specific allegations or the documentary evidence, the judge found that Crown Communities (1) "exerted no more pressure" than that employed by the association or CDI and (2) "did not provide misleading information to park residents and used bona fide efforts to inform and persuade." In light of the documentary evidence discussed above, the basis for the judge's findings is not evident; at a minimum, he was incorrect that Crown Communities accurately represented the state of rent control. Where the judge's finding gives us reason to think that his ultimate conclusion regarding Crown Communities's G. L. c. 93A liability may have rested on improper grounds,²¹ we must vacate the judgment on the association's counterclaim for violation of c. 93A and remand for further consideration.

²¹ We do not decide whether the statements on which the association relies were in violation of G. L. c. 93A, per se. Providing inaccurate information and promising financial incentives may or may not rise to the level of a c. 93A violation depending on the circumstances. The difficulty we face is that the judge appears to have thought that Crown Communities did not engage in either practice at all.

c. Violation of the MCRA. Lastly, on the association's counterclaim for violation of the MCRA, the judge concluded that Crown Communities did not engage in any threatening, intimidating, or coercive conduct, as required by the MCRA. See Pettiford v. Branded Mgt. Group, LLC, 104 Mass. App. Ct. 287, 296 (2024). We agree.

"To establish a claim under the MCRA, a plaintiff must prove that (1) the exercise or enjoyment of some constitutional or statutory right; (2) has been interfered with, or attempted to be interfered with; and (3) such interference was by threats, intimidation, or coercion" (quotation and citation omitted). Pettiford, 104 Mass. App. Ct. at 296. "[T]hreats and intimidation often rely on an element of actual or threatened physical force." Kennie v. Natural Resources Dep't of Dennis, 451 Mass. 754, 763 (2008). "[C]oercion is a broader category that may rely on physical, moral, or economic coercion," but it still requires the application of force necessary to "constrain [others] to do against [their] will something [they] would not otherwise have done" (quotation and citation omitted). Id. For example, "coercion may be found where one party deprives another of rights due under a contract." Buster v. George W. Moore, Inc., 438 Mass. 635, 647 (2003).²²

²² The "threat, intimidation, or coercion" element of the MCRA stands in contrast to the requirement under G. L. c. 93A of

Here, the association relies on economic coercion but does not argue that Crown Communities coerced park residents by withholding economic benefits to which they were entitled. Rather, the association argues that residents were economically coerced into withdrawing their support from the association because Crown Communities (1) misled residents into thinking they would lose rent control and (2) provided financial incentives to residents. The association has not articulated how this conduct had the same sort of coercive effect that the withholding of an economic benefit might have. Park residents were free to reject Crown Communities's financial incentives and decide for themselves how to proceed, and the association has not pointed us to any evidence showing otherwise.²³

Conclusion. So much of the judgment as entered on the counterclaim for violation of the MCRA is affirmed. In all other respects, the judgment and the order on the motion to amend the judgment are vacated, and the matter is remanded for further consideration consistent with this opinion.

proving unfair or deceptive acts or practices. An act or practice can be unfair or deceptive without being threatening, intimidating, or coercive. Thus, the fact that we are vacating the judgment on the c. 93A claim does not mean that we must vacate the judgment on the MCRA claim.

²³ There may be times that someone acts so unfairly or deceptively as to overbear someone else's will. The association has not made that case here.

So ordered.

RUBIN, J. (concurring). I join Justice Vuono's excellent opinion for the court in full. I write separately to address the question of a remand. Of course, as an appellate court, we may not make findings of fact. Those must be made by the trial judge in the first instance. The one clear error of fact argued by the Pocasset Park Association (association) that is ultimately relevant to the right of first refusal claim is that the judge miscounted the number of signatures on the petition. He said there were forty-nine, and the association argues, and we have concluded, by counting them, that there are sixty-one.

Crown Communities, LLC (Crown Communities) does not dispute this, nor does it argue that this is a matter of indifference because there are any offsetting errors. The judge's other factual findings about the number of (a) resident-signers who were not owners, (b) owner-signers who were not residents, (c) duplicate signatures from a single resident, and (d) rescissions, are not challenged and are adequately supported by the record.¹

Although we could perhaps ourselves add twelve to the number of valid signatures the judge found, ordering judgment to

¹ I have serious doubt that a rescission after the purchase and sale agreement has been signed of a party's signature on the petition can have any effect on the adequacy of the signature on the petition that led to the signing of the purchase and sale agreement, but we have assumed for purposes of this appeal that it may.

enter for the association, because I agree with Justice Vuono that this may be viewed as a matter of fact finding, I join in that portion of the opinion ordering a remand.

I also want to note that, although neither the association nor Philip Austin, as trustee of the Charles W. Austin Trust (trust), raises the question, the length of time since the association's purchase and sale agreement was signed suggests to me that G. L. c. 140, § 32R, with its tight deadline for closing, may not permit a third-party offeror to challenge the exercise of the right of first refusal by bringing a suit before closing, as Crown Communities has done, and preventing that closing from going forward at the deadline. Cf. G. L. c. 140, § 32R (c) ("No owner shall . . . unreasonably delay the execution or closing on a purchase and sale or lease agreement with residents who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of an offer for which notice is required to be given pursuant to paragraph [b]").

The trust put the park on the market, and signed a purchase and sale agreement with the association that called for closing within 120 days, within the statutorily-mandated maximum of 180 days, see G. L. c. 140, § 32R (c), over four and one-half years ago. At least because of the endorsed memorandum of lis pendens, and perhaps because of this lawsuit itself, the trust

has been unable to sell its property, and the association, representing those protected by the statute, has been unable to buy it because of Crown Communities's actions, even though Crown Communities was aware when it made the offer of the risks inherent in the statutory first right of refusal and of the quick deadlines the statute included. Indeed, in seeking endorsement of its memorandum of lis pendens, Crown Communities argued the endorsement was necessary precisely to prevent the statutory deadlines from being met, what it called the "clear danger the [d]efendants may transfer or encumber the [p]roperty among themselves or in relation to third-party actors (e.g., financing mechanics currently underway)."

It may be that because of the risk to the statutory scheme's deadlines, G. L. c. 140, § 32R, should be read to allow the third-party offeror to challenge the exercise of the right of first refusal only by mechanisms that do not hold up the statutorily-mandated financing and closing deadlines, by requiring the denial of motions for endorsement of memoranda of lis pendens, or perhaps by allowing only suits brought after closing, for example suits for money damages or specific performance. Cf. Greenfield Country Estates Tenants Ass'n v. Deep, 423 Mass. 81,85-85, 87 (1996) (specific performance was proper remedy for mobile home park owner's sale of park to third party without providing notice in violation of G. L. c. 140,

§ 32R, where association of fifty-five of sixty park tenants sent letter attempting to exercise their right of first refusal upon learning of sale).

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
DOCKET NO. 2072CV00083

CROWN COMMUNITIES, LLC

vs.

PHILIP AUSTIN, TRUSTEE OF THE CHARLES W. AUSTIN TRUST & another¹

AMENDED FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON REMAND

This matter is before the court for further consideration after remand from the Appeals Court. The case concerns the attempted sale of a manufactured home park in Pocasset, Massachusetts, and specifically whether the park residents validly exercised their right of first refusal under the controlling statute, G. L. c. 140, § 32R, to purchase the park. On November 15, 2019, the park's owner, the Charles W. Austin Trust ("Austin Trust"), executed a purchase and sale agreement to sell the park to the plaintiff, Crown Communities, LLC ("Crown"). After some park residents learned of the proposed sale, they formed an association, the Pocasset Park Association, Inc. ("Association"), to attempt to exercise their statutory right of first refusal. In January of 2020, the Austin Trust executed a second purchase and sale agreement to sell the park to the Association.

On February 20, 2020, Crown filed this declaratory judgment action against Austin Trust and the Association in order to determine which purchase and sale agreement was valid.² The Association counterclaimed for tortious interference with contractual relations, violation of G.L. c. 93A, violation of the Massachusetts Civil Rights Act ("MCRA"), G.L. c. 12, §§ 11H-11I, and a declaratory judgment that it properly exercised its right of first refusal and that the Austin Trust

¹ Pocasset Park Association, Inc.

² Crown's complaint also asserted claims against the Austin Trust for breach of contract and detrimental reliance.

unreasonably delayed the Association's ability to close on the purchase of the park. The Austin Trust likewise seeks a declaratory judgment concerning who is the lawful purchaser of the park.

After a jury-waived trial in August 2022, this court concluded that the Association did not validly exercise its statutory right of first refusal because (1) the Association did not represent the requisite number of the park's resident owners and (2) the requisite number of the park's resident owners did not support the Association's purchase of the park. Declaratory judgment therefore entered in favor of Crown. The court also found in Crown's favor on the Association's counterclaims. The Association subsequently filed a motion to amend the judgment, which was denied.

The Association filed an appeal. By written decision, the Appeals Court affirmed judgment in Crown's favor on the MCRA counterclaim but vacated the judgment in all other respects and "remanded for further consideration consistent with this opinion." Specifically, the Appeals Court instructed this court to make additional findings and to reconsider its initial findings in light of the standards set forth in the Appeals Court opinion. Based upon the Appeals Court opinion, the credible evidence presented at trial, and all reasonable inferences fairly drawn therefrom, the court now makes the following findings of fact and rulings of law.

Subsidiary Findings of Fact³

The park is a manufacturing housing community located in the town of Bourne, in a section known as Pocasset. In and around December of 2019, the park contained 81 occupied homes. The park has been owned by the Austin Trust since approximately 2015 and is managed by Philip Austin, the trustee of the Austin Trust. Mr. Austin provides routine maintenance, collects rent, and

³ Some findings of fact are reserved for later discussion.

maintains the rent roll, among other duties. Crown is a limited liability company in the business of acquiring and managing manufactured housing communities.

On November 15, 2019, Crown entered into a purchase and sale agreement to purchase the park from the Austin Trust for \$3.8 million in cash. Crown planned to continue operating the park as a manufactured housing community, and the sale was not going to result in a change of use or discontinuance of the park. Paragraph 7B of the Crown PSA obligated the Austin Trust to "send the required notice" under Chapter 140 Section 32R "of [such] pending sale to each resident" of the park. Commencing 45 days after the last notice, Crown thereafter would have a period of 75 days to "review and to inspect or cause to be inspected all aspects of the physical and economic condition of the Subject Premises."

On November 20, 2019, the Austin Trust sent notices of the proposed sale, including a copy of the purchase and sale agreement, by certified mail to the persons known by the Austin Trust to be residing in the park. Upon receipt of the notice, several residents became alarmed, fearing that a change in ownership would disrupt their housing situation, and began to meet to discuss options. By the end of December 2019, a small group of the residents had coalesced and began to receive assistance from the Cooperative Development Institute ("CDI"), a non-profit organization that assists manufactured home communities in purchasing and operating their communities as cooperatives. CDI, through Andrew Danforth and Nora Gosselin, engaged with some of the residents to hold informational meetings, assisted them with forming the Association, and provided a form petition to invoke the right of first refusal.

In a completely disorganized and haphazard fashion, several residents fanned out door to door to campaign for and collect signatures on the petition, which stated, "We . . . hereby express our intent to exercise and do hereby invoke our right of first refusal under Massachusetts law to

purchase [the] Park. We therefore authorize [CDI and/or the Association] to . . . submit and complete, on our behalf an offer and/or purchase and sale agreement with the current owner to purchase the Park” The petition did not specify that only resident owners were authorized to sign the petition, and the persons gathering signatures made no effort to verify whether the signatories were owners or simply subtenants or guests at the park. Some park residents were enthusiastic and readily signed, some refused to sign, and still others signed in order to be left alone. The persons gathering signatures visited some residents multiple times asking them to sign the form, despite those residents’ requests to be taken off the list and left alone. A total of 61 people signed the petition.

Some residents also began to ask other residents to sign membership agreements to join the Association. However, only a few were admitted into evidence and the February 28, 2020, membership list is not probative with respect to how many members the Association had as of the time the right of first refusal was invoked on January 2, 2020. Ms. Gosselin, an employee of CDI, credibly testified that the process of gathering signatures of resident owners for the petition largely occurred first, to ensure compliance with the 45-day deadline to invoke the right of first refusal and recruiting members for the homeowner’s association took place thereafter.⁴

CDI assisted the Association with obtaining a \$100,000 loan through an affiliated lender, ROC USA, and some of the loan proceeds were used to hire legal counsel. On January 2, 2020, the attorney for the Association sent a letter to the Austin Trust, representing that (1) the park residents, through the Association, were exercising their statutory right of first refusal and (2) an attached petition contained “signatures of at least 51% of the residents of the [park] indicating a desire to move forward with the [Association’s] purchase.” The attorney also attached a proposed

⁴ Demonstration of sufficient membership in the homeowner’s association was required by the lender at closing, a step not yet reached due to the pendency of this litigation.

purchase and sale agreement to the letter. Unlike Crown's purchase and sale agreement, the Association's purchase and sale agreement contained a mortgage contingency. Although Mr. Austin had some doubts about the integrity and sufficiency of the petition, he signed the Association's purchase and sale agreement on January 7, 2020, on the advice of counsel, and notified Crown.

When Crown learned of the Association's attempt to exercise the statutory right of first refusal, Crown sought legal advice and subsequently began to send letters to park residents and meet with residents to win their support. Crown's visits to the park were informational, seeking to convince park residents that Crown was a better option for them than a cooperative ownership arrangement. A letter signed and sent to park residents by Mr. Cabot on behalf of Crown suggested that rent control rights would be lost under an association. Another letter stated that residents would be "vulnerable" to rent increases if the residents were to "lose your rent control protection." One letter also offered gift cards and a "Crown Guarantee," which included financial incentives of a reimbursable \$5,000.00 credit toward remodel costs, to residents who signed an enclosed form stating they wanted Crown to purchase the park and withdrawing their support from the Association. Some residents who had previously signed the petition reiterated their desire to move forward with the Association's purchase of the park, while others changed their minds and freely signed the withdrawal form. Four signed withdrawal forms were admitted into evidence.

On February 20, 2020, Crown filed this lawsuit. The court credits the testimony of Crown's President, Alexander Cabot, that the sole and exclusive purpose of the lawsuit was to enforce Crown's contractual right to purchase the property.

The court heard testimony from Joseph Hogan, who conducted a property condition assessment of the park in February 2020. The court finds that Mr. Hogan lacks the foundation and

expertise to provide reliable figures for actual construction work to be done at the property. He did not demonstrate or even claim any expertise in this area. His report (Exhibit 43) is full of caveats that actual construction figures should be sought from construction professionals. Both his opinions from 2020 as to construction cost estimates and his subsequent highly generalized opinion regarding the increase in these costs since 2020 are highly unreliable and not credible.

Ultimate Findings of Fact and Rulings of Law

I. Right of First Refusal

“[M]anufactured housing communities provide a viable, affordable housing option to many elderly persons and families of low and moderate income” (citation omitted). *Blackman’s Point Homeowners’ Ass’n, Inc. v. Call*, 103 Mass. App. Ct. 711, 713 (2024). However, renting land and placing a manufactured housing unit in a manufactured housing community also comes with risks. See *id.* Because manufactured housing units often cannot be relocated, the residents of a manufactured housing community are “at the peril of their landlord[]” should their landlord or a subsequent purchaser of the land decide to discontinue the community. *Greenfield Country Estates Tenants Ass’n, Inc. v. Deep*, 423 Mass. 81, 86 (1996). “To protect this vulnerable community, the Legislature enacted the Manufactured Housing Act, G.L. c. 140, §§ 32A-32S” (the “act”), *Blackman’s Point Homeowners’ Ass’n*, 103 Mass. App. Ct. at 713, which “enables residents of manufactured housing communities to purchase the land on which their homes exist” through a right of first refusal, *Greenfield Country Estates Tenants Ass’n*, 423 Mass. at 86.

The act includes provisions specifying when and how an owner must give notice to residents of the intention to sell, see G.L. c. 140, § 32R(a), and when and how an owner must give notice to residents of a bona fide offer, see *id.* § 32R(b). See *Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.*, 441 Mass. 376, 382-383 (2004) (under right of first refusal, owner must

provide "seasonable disclosure of the terms of any bona fide third-party offer" and may not dispose of the property "without first offering the property to the holder of the right at the third party's offering price"). "On notice of receipt of a bona fide offer from a third party, a right of first refusal ripens into an option to purchase according to its terms." *Greenfield Country Estates Tenants Ass'n*, 423 Mass. at 89; *Frostar Corp. v. Malloy*, 63 Mass. App. Ct. 96, 103 (2005). As such, the act then provides that "[a] group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase . . . the said community for purposes of continuing such use thereof, provided" that the group or association satisfies certain criteria. G.L. c. 140, § 32R(c). The group or association must

"(1) submit[] to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submit[] to the owner a proposed purchase and sale agreement. . . . on substantially equivalent terms and conditions within 45 days of receipt of notice of the offer made under subsection (b) of this section, (3) obtain[] a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement and (4) close[] on such purchase . . . within an additional 90 days after the end of the 90 day period under clause (3)."

G.L. c. 140, § 32R(c). The parties agree that the Association bears the burden to establish that it met the requirements to exercise the statutory right of first refusal. The parties also agree that clause (1) required the Association to submit to the Austin Trust reasonable evidence that the resident *owners* of at least fifty-one percent of the occupied homes in the park approved the purchase of the park by the Association.

Under the applicable regulations, "reasonable evidence" includes "a document signed by such persons." 940 Code Mass. Regs. § 10.09(3)(a); see also 940 Code Mass. Regs. § 3.09(3)(a). With its proposed purchase and sale agreement, the Association submitted to the Austin Trust a

petition with the signatures of 61 park residents. After careful review of the record, with special scrutiny of the petition and the trial testimony, the court finds that at least 44 signatures on the petition were of resident owners.⁵ The remainder were signatures either of subtenants who did not own, owners who did not reside at the park, and/or duplicates of more than one person for each home.^{6,7} Regardless of whether the denominator is all occupied units (44 out of 81 is approximately 54%) or the smaller subset of resident-owned units, 44 signatures amounts to more than 51%. The petition therefore constitutes reasonable evidence submitted to the Austin Trust that at least 51% of resident owners in the park supported the Association's purchase of the park. The petition likewise satisfies the Association's burden to show that it represents at least 51% of the manufactured home owners residing in the community. See *Crown Communities, Inc. v. Austin*, 105 Mass. App. Ct. 113, No. 23-P-580, slip op. at 14-15 n.17 (2024) ("If the association has met

⁵ Three additional signatures belong to persons—Karen Saunders, Raymond Oliver III, and Arlene Whittier—who resided in the park, but did not own. However, Mr. Austin did not know these residents did not own their homes until after the relevant events took place. Based on his trial testimony, it appears Mr. Austin believed these three people were resident owners at the time the petition was circulated in December 2019 and when he signed the purchase and sale agreement in January 2020. Accordingly, it is perhaps more appropriate to state that the Association submitted reasonable evidence that 47 resident owners supported the exercise of the right of first refusal. Because 44 signatures is sufficient under any view of the facts or formulation of the standard, the court uses that figure throughout its analysis.

⁶ As noted in the original order, the court excludes 14 signatures in total. The following six are owners who do not reside at the address listed on the petition: Thyme Gardner, Paula Cote, Melinda Nickerson, Robin Hope, and William Silvers. Rosalie MacDonald owns two units at the park; she resides in one and sublets the other to her son. She signed the petition twice. Her signature for the unit she sublets to her son is excluded, as she is not a resident owner of that unit.

The following seven are subtenant residents who do not own the unit they live in: Lynn Wetherbee, Greg Reif, Janelle Hope, Derek Everman, Barbara Semple, Quentin Andrade, and Ray MacDonald.

Clara Peters is a duplicate signature of Raymond Oliver III, discussed *supra* in footnote 5; her signature is thus excluded. Although there are other duplicates (Robin Hope & Janelle Hope; Rosalie MacDonald & Ray MacDonald; Greg Reif & William Silvers), the signatures are excluded for other reasons, as set forth above, and the court does not count them as duplicates in order to avoid double-counting and double-excluding those signatures.

⁷ The court does not subtract the four resident owners who later executed the withdrawal form and rescinded their signatures from the petition. The rescissions occurred after the purchase and sale agreement was signed, and thus do not bear on the question of how many signatures were reasonably in evidence at that time. Nor does the court discount the signature of Cynthia Patstone, who testified it is not her signature on the petition, because there is no indication from the record that the Austin Trust would have had reason to believe her signature was forged. Even subtracting her signature, the petition still contains sufficient signatures of resident owners (at least 43, or up to 46).

[its] burden [as to the residents' support for purchase of the park], it will also have met its burden with respect to who it represents").

Moreover, the purchase and sale agreement submitted by the Association and executed by the Austin Trust was both timely and contained "substantially equivalent terms and conditions" as the offer made by Crown. G.L. c. 140, § 32R(c)(2). See *Crown Communities*, 105 Mass. App. Ct. 113, No. 23-P-580, slip op. at 16 (in the context of § 32R, "[t]he inclusion of a mortgage contingency to a purchase and sale agreement by an association where the bona fide offer is for cash does not take it outside the universe of offers 'on substantially equivalent terms and conditions' within the meaning of the statute").

Insofar as Crown recorded a memorandum of lis pendens with respect to the property before the deadlines in the statute for finance commitment and closing were reached, "hamper[ing] the sale of the property and the ability to obtain financing for it," it cannot now complain "that the statutory deadlines for those actions were not complied with." *Id.* at 16-17, citing *Augis Corp. v. Massachusetts Comm'n Against Discrimination*, 75 Mass. App. Ct. 398, 406 (2009), and *Winchester Gables, Inc. v. Host Marriott Corp.*, 70 Mass. App. Ct. 585, 596 (2007).

For the foregoing reasons, the court concludes the Association properly exercised its right of first refusal in compliance with G.L. c. 140, § 32R. The purchase and sale agreement executed between the Austin Trust and the Association is valid.

II. Association's Unreasonable Delay Claim Against Austin Trust

The Association asserts the Austin Trust unreasonably delayed the Association's ability to close on its purchase and sale agreement, in violation of G.L. c. 140, § 32R(c). It is plain, however, that the Austin Trust has simply been unable to close and sell the property due to the recording of the lis pendens on the property as well as the pendency of this lawsuit to adjudicate the dispute

between Crown and the Association as to which purchase and sale agreement is valid. Further, the trial testimony of the Association's representatives and agents of CDI acknowledged that the Austin Trust fully complied with all requests during the due diligence period set forth in the Association's purchase and sale agreement. Accordingly, the Association is not entitled to a declaratory judgment that the Austin Trust unreasonably delayed the ability of the Association to close on its purchase and sale agreement.

III. Association's Chapter 93A Claim Against Crown

General Laws c. 93A prohibits the use of unfair or deceptive acts or practices by those engaged in trade or commerce. Of the four elements necessary to prove a claim under c. 93A, see *Rafferty v. Merck & Co.*, 479 Mass. 141, 161 (2018), the only element at issue here is whether Crown's conduct amounted to unfair or deceptive acts or practices. "[W]hether a particular set of acts, in their factual setting, is unfair or deceptive is a question of fact. But whether conduct found to be unfair or deceptive rises to the level of a chapter 93A violation is a question of law" (quotations and citations omitted). *H1 Lincoln, Inc. v. South Washington St., LLC*, 489 Mass. 1, 13-14 (2022). Whether an act is unfair or deceptive is discerned from the circumstances of each case. See *Kattar v. Demoulas*, 433 Mass. 1, 14 (2000).

To the extent the Association relies on the filing of this action to support its c. 93A claim, based on the Association's position that Crown's claims are "frivolous," the court disagrees. As the Appeals Court noted, "the record shows that there was a good faith dispute over whether the Association validly exercised its statutory right of first refusal." *Crown Communities*, 105 Mass. App. Ct. 113, No. 23-P-580, slip op. at 17 n.18.

The Association also points to the letters Crown sent to park residents in January 2020, some of which (1) stated residents would lose rent control protections if the Association purchased

the park and (2) promised financial incentives for those who signed the withdrawal form stating they would like to support Crown's efforts to purchase the park, rather than the Association's. "Providing inaccurate information and promising financial incentives may or may not rise to the level of a c. 93A violation depending on the circumstances." *Id.* at 19 n.21.

The letters' rent control statement was inaccurate. Rent control does not, as a general matter, exist in Massachusetts, see *Quinn v. Rent Control Bd. of Peabody*, 45 Mass. App. Ct. 357, 375-378 (1998), and it is undisputed that the town of Bourne has not adopted any rent control ordinances for manufactured housing communities. However, based on the trial testimony, the court finds Mr. Cabot and Heath Biddlecome, Crown's principals, genuinely believed Massachusetts did have rent control and included this erroneous statement in the letters based solely on that misunderstanding. The court finds Crown did not have nefarious intent to mislead or engage in "scare tactics," as the Association argues. The one or two sentence statements regarding rent control are not stand-alone statements but contained within lengthy letters extolling the benefits of Crown purchasing the park, and the demerits of owning through the Association. None of the other statements⁸ made by Crown in the subject letters were credibly challenged by the Association.⁹ Additionally, there is no credible evidence that any person relied on the alleged representations.

The court also finds that Crown's offer of financial incentives was extended to residents to convince residents that Crown was a better option for them than a cooperative ownership

⁸ The Association suggests that some of the language in the letters asserting that the residents would be personally liable was unfair and deceptive. There is nothing unfair or deceptive about stating what seems to be an obvious proposition: that if an association of residents purchases the park, then the residents will ultimately be responsible for the regular items incident to property ownership. The Association attempts to read more into it, but the court credits that Crown merely intended to advocate for its position and ensure residents understood the implications of association ownership.

⁹ One of the Crown letters labels the Association's efforts to gather signatures as "coercive." There is credible evidence supporting that conclusion.

agreement. The Association's analogy to *Mac's Homeowners Ass'n v. Gebo*, 92 Mass. App. Ct. 453 (2017), is not persuasive. That case addressed a rule 12(b)(6) motion, a vastly different posture than trial. The court in *Mac's* merely held that the plaintiff's allegations regarding the conduct of a proposed purchaser of a manufactured housing community were sufficient to survive the motion to dismiss stage. The proposed purchaser, a developer, planned to remove all the existing mobile home units and replace them with new units they would own and rent out to third parties.

In furtherance of its plan, the developer went door to door and sent letters to the existing residents, essentially stating they would be forced to either "move or vacate," even though the statute allows for the termination of tenancy only under limited circumstances that were not present. Unlike the situation described in *Mac's*, Crown made clear repeatedly that it planned to continue use of the park as a manufactured housing community with the current residents and had no intent to forcibly evict residents. Crown's offer of financial incentives is not equivalent to coercive notices to "move or vacate," nor is such an offer circumscribed by the statute. There is no credible evidence that such a threat was ever made or implied. As such, *Mac's* is distinguishable.

Moreover, the court credits the testimony of several residents that the Association also exerted some undue coercive pressure on them in its campaign for petition signatures to support its efforts to purchase the park, such as making multiple return visits in disregard of residents' previous refusals to sign and requests to be left alone. Both Crown and the Association, sometimes with help from CDI, held informational meetings for residents and both parties visited residents to advocate their positions. Some residents remained steadfast in their initial views, while others freely changed their minds one way or the other. After assessing the trial testimony, the court credits and finds that everyone involved acted in their best interests and in good faith. None acted

in a manner that was materially unfair or deceptive as a matter of fact. As a matter of logic and common sense, the offer of a small incentive to support Crown is neither unfair nor deceptive.

In sum, under the circumstances involved in this case, the court concludes that Crown's erroneous statement regarding rent control (corrected by the Association in its own letter to residents and not repeated in Crown's two subsequent letters or at any other point in the month's long process) and offer of financial incentives do not rise to the level of a c. 93A violation. Consequently, the Association is not entitled to judgment on its counterclaim against Crown for violation of c. 93A.¹⁰

IV. Association's Tortious Interference Claim Against Crown

To prevail on a claim of tortious interference, the Association must establish that it had a valid contract with the Austin Trust; that Crown knowingly induced the Austin Trust to break that contract; that Crown's interference was intentional and improper in motive or means; and that the Association was harmed by Crown's actions. See *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 715-716 (2011). As explained in the preceding sections, the Association has established that its purchase and sale agreement with the Austin Trust was valid. However, the Association has not shown that Crown's interference was improper in motive or means.

Merely advancing one's own economic interests is not an "improper" motive for purposes of a tortious interference claim. *Skyhook Wireless, Inc. v. Google Inc.*, 86 Mass. App. Ct. 611, 621 (2014). For substantially the same reasons discussed with respect to the c. 93A claim, the court also concludes Crown did not interfere by improper means. Crown's principals held a genuine, albeit erroneous, belief regarding rent control in Massachusetts and included that statement in its

¹⁰ To the extent Crown seeks dismissal of the counterclaims under the anti-SLAPP statute, the motion is denied. The Association's claims against Crown are not premised solely on Crown's petitioning activity (filing this action), but rather have a substantial basis in addition to the petitioning activity. See *Bristol Asphalt, Co. v. Rochester Bituminous Products, Inc.*, 493 Mass. 539, 555-556 (2024).

initial letters to residents with an intent to ensure residents were fully informed about the pros and cons of the Association purchasing the park, not an intent to mislead or intimidate. The mistake was not repeated verbally or in writing. The offer of financial incentives also does not constitute improper interference, particularly where the resulting rescissions had no effect on the Association's bid to purchase the park nor retroactively undermine the reasonable evidence submitted to the Austin Trust at the time the Association invoked the right of first refusal. Finally, initiation of this declaratory judgment action to determine which purchase and sale agreement was valid is not an "improper means." *Pembroke Country Club, Inc. v. Regency Sav. Bank*, 62 Mass. App. Ct. 34, 39-40 (2004). Accordingly, the Association is not entitled to judgment on its tortious interference claim.¹¹

ORDER ON REMAND

For the foregoing reasons, it is **DECLARED** and **ADJUDGED** that:

(1) the Pocasset Park Association, Inc. lawfully exercised its statutory right of first refusal pursuant to G.L. c. 140, § 32R (Count I of Pocasset Park Association, Inc.'s counterclaim against Crown Communities, LLC and crossclaim against Philip Austin, as Trustee of the Charles W. Austin Trust);

(2) the purchase and sale agreement executed between Philip Austin, as Trustee of the Charles W. Austin Trust and Pocasset Park Association, Inc. is valid and enforceable (crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.);

(3) the purchase and sale agreement, which was executed between Philip Austin, as Trustee of the Charles W. Austin Trust, and Crown Communities, LLC is not enforceable (crossclaim and

¹¹ Judgment for Crown on the Association's MCRA claim was affirmed by the Appeals Court. The court therefore does not address it in this decision.

counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.), due to the Association's valid exercise of its right of first refusal.

(4) Philip Austin, as Trustee of the Charles W. Austin Trust, is obligated to sell Pocasset Park to Pocasset Park Association, Inc. and not to Crown Communities, LLC. (Count II of Crown Communities, LLC's complaint); and

(5) Pocasset Park Association, Inc. has not proven that Philip Austin, as Trustee of the Charles W. Austin Trust, unreasonably delayed the ability of Pocasset Park Association, Inc. to close on its purchase and sale agreement (Count II of Pocasset Park Association, Inc.'s cross-claim against Philip Austin, as Trustee of the Charles W. Austin Trust).

It is **ORDERED** that judgment shall enter in favor of Crown Communities, LLC and against Pocasset Park Association, Inc. on the latter's counterclaims that Crown Communities, LLC: (1) tortiously interfered with Pocasset Park Association, Inc.'s contract to purchase Pocasset Park (Count III), (2) violated G.L. c. 93A (Count IV), and (3) violated the Massachusetts Civil Rights Act (Count V).

It is further **ORDERED**, consistent with the prayers for relief of Crown Communities, LLC that its claims against Philip Austin, as Trustee of the Charles W. Austin Trust, for breach of contract (Count I) and detrimental reliance (Count III) are **MOOT**.¹²

No party shall be entitled to costs.


MICHAEL K. CALLAN
Justice of the Superior Court

DATED: March 27, 2025

¹² To the extent Crown may assert its claims against the Austin Trust are no longer moot, the court nevertheless determines Crown is not entitled to judgment on those claims. Crown's letter of intent to purchase the park specified that the Austin Trust "shall notify existing residents of pending sale no later than three business days after opening of escrow" in accordance with G.L. c. 140, § 32R. (Ex. 1). Moreover, Crown's purchase and sale agreement contained provisions stating the agreement was subject to the right of first refusal under G.L. c. 140, § 32R, and requiring the Austin Trust to provide any notice to residents that was required under § 32R. (Ex. 2, ¶ C & ¶ 7(B)). As noted by the Appeals Court, the residents were entitled to notice of the proposed sale in this case under § 32R(b), contrary to Crown's arguments. Insofar as the purchase and sale agreement was expressly subject to the right of first refusal and both the letter of intent and agreement contemplated Austin Trust providing the required notice to residents of the pending sale, Crown has not established breach or reasonable reliance.

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

BARNSTABLE SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

* * * * *
CROWN COMMUNITIES, LLC, *
*
Plaintiff *
*
v. * Docket Number 2072CV00083
*
PHILIP AUSTIN TRUSTEE OF *
THE CHARLES W. AUSTIN *
TRUST, ET AL., *
*
Defendants *
*
* * * * *

BEFORE: Honorable Michael Callan
Barnstable Superior Court
Barnstable, Massachusetts
August 15, 2022

APPEARANCES:

Attorney Walter B. Sullivan, Justin DuClos, Kayla
Sepulveda on behalf of the plaintiffs.

Attorney Christopher Viera on behalf of the defendant,
Philip Austin, Trustee of the Charles W. Austin Trust.

Attorney Thomas Aylesworth on behalf of the Pocasset
Park Association, Inc.

MARGARET MCDONOUGH, CVR
CERTIFIED COURT TRANSCRIBER

I N D E --

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ALEXANDER LEE CABOT,				
By Mr. Sullivan	23		125	
By Mr. Viera		78		
By Mr. Aylesworth		80		128
HEATH BIDDLECOME,				
By Mr. Sullivan	130			
By Mr. Aylesworth		143		
PHILIP AUSTIN,				
By Mr. Sullivan	159			
By Mr. Aylesworth		206		
By Mr. Viera		224		

1 A Yes, it does.

2 Q Approximately how many does it own as of today?

3 A At present 17.

4 Q And are you involved in a -- any negotiations for
5 purchase of other parks?

6 A As a matter of fact, we have four that we are --
7 have pending contracts on at the moment.

8 Q And where are those parks located? One is in
9 Illinois. One is in Iowa, and two are in
10 Massachusetts, and that includes this property here
11 that we're discussing today.

12 Q Okay. And is one in Easton?

13 A I'm sorry. That would actually make it five
14 including the Easton property.

15 Q And the other park in Massachusetts, is that in
16 Western Mass.?

17 A No. That's actually outside of Boston.

18 Q Okay. Can you tell me how you learned that
19 Pocasset Park was available for sale?

20 A Certainly. A colleague of mine, and I'll just
21 state that one of my roles in the company is to try
22 and source potential deals, so I have a large network
23 of brokers, attorneys, bankers, industry people that
24 are always on the lookout for properties for sale.

25 A colleague of mine from the business, who I've

1 known for several years, who happened to know Mr.
2 Austin, reached out to me in 2019 and said, "A
3 gentleman that I know who lives in Massachusetts is
4 thinking about selling his mobile home park. Is it
5 something you're interested in looking at?"

6 Q Can you tell me approximately when that was?

7 A That conversation would have happened in August
8 2019.

9 Q Okay. And what did you do as a result of that?

10 A I went to Massachusetts and contacted Mr. Austin,
11 introduce myself, said, "I'd like to come by and meet,
12 get to know you, look at your property and see if this
13 is something that we want to, you know, take a serious
14 look at."

15 Q And then what happened?

16 A September of 2019, I drove down to Pocasset, met
17 Mr. Austin in his workshop down there. We spent
18 several hours together. Generally speaking with an
19 owner, I always like to get to know them, see how long
20 they've owned the property. Just see what sort of an
21 operator they are, get the history, get their history,
22 find out what the big details of the property are.
23 Over the course of the afternoon, that's what I did
24 with Mr. Austin. Showed me the property, gave me the
25 full skinny on it.

1 this?

2 Q Okay. And then at some point in time did you --
3 did you commence an action to enforce your contract?

4 A Yes, we did.

5 Q And is that the -- what brings us here today?

6 A Yes, it is.

7 Q Okay. And have you looked in detail at Exhibit
8 8? During the last several years, have you reviewed
9 it before?

10 A Exhibit 8?

11 Q I'm sorry. Yeah. The one you're looking at now.
12 Yes.

13 A On many occasions. Yes.

14 Q And can you tell me what your understanding of
15 the homeowners association is?

16 A What it is now, or what it was then?

17 Q What it is now. What is your understanding?

18 A My understanding is that there is an association
19 that represents some fraction of the residents that
20 live at the park at Pocasset, which is self-organized
21 and has various interests in various agendas. One of
22 which, of course, is buying this property.

23 Q And have you had an opportunity since this
24 document was provided to you to speak with any
25 residents at the park?

1 A Yes.

2 Q And can you tell me the first time that happened?

3 A The first time that we in depth started speaking
4 with residents at the community was at the very end of
5 January 2020.

6 Q And where did that occur?

7 A In Pocasset at the property.

8 Q And was it at the park?

9 A Fo the most part. Yes.

10 Q Okay. And had you made arrangements to speak
11 with them, or is that something you just happened to
12 run into people?

13 A No. When this happened, Phil invited us to the
14 park to speak to some of the residents there who
15 apparently were confused about what course of action
16 they were going to be taking and to basically explain
17 who we were, what our intent was. Among other things
18 that we weren't tearing the park down or forcing
19 people out of their homes, and to basically try and
20 make the case that the welfare of the residents and
21 the welfare of the broader community would be best
22 served by selling to a professional corporate
23 operators, such as ourselves, as opposed to going down
24 the road of forming a co-op and trying to self-manage
25 it.

1 A The entire paragraph?

2 Q Yes, please.

3 A "Seller desires to sell. and purchaser desires to
4 purchase the real estate and mobile home park (the
5 transaction) in accordance with and subject to the
6 terms and conditions here and after set forth and
7 subject to Massachusetts laws and regulations,
8 including but without limit the right of first refusal
9 accorded to residents in manufactured housing
10 Communities under MGL, Chapter 140, Section 32R."

11 Q So when you negotiated this contract, you
12 understood that this was part of the contract,
13 correct?

14 A Our attorney was the primary point of contact in
15 the negotiation; but to your point, yes. As I've
16 already testified, I was aware that this law existed.
17 I did not feel that it was applicable in this case for
18 the reason that we were not redeveloping the
19 community.

20 Q Fair enough. At the time when you did negotiate
21 and execute this contract for the purchase of the
22 park, what was your intention for the use of the real
23 estate?

24 A Our intention was to continue using it in the
25 exact same way that it had been used historically,

1 which was a manufactured housing community.

2 Q Okay. And if you are able to continue to
3 purchase the park and you are, you know, granted the
4 transfer of the ownership, what is -- is that still
5 your intention?

6 A That remains to this day and will always be our
7 intention. Yes.

8 Q To keep it as a mobile --

9 A To maintain the land as a mobile home community,
10 renting sites for manufactured home owners.

11 Q Okay.

12 A Including the ones that presently live there.

13 Q Thank you, Mr. Cabot.

14 MR. VIERA: I have no more questions, Your
15 Honor. Thank you.

16 THE COURT: Thank you, Mr. Viera.

17 Mr. Alyesworth, you may examine the witness.

18 MR. AYLESWORTH: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. AYLESWORTH:

20 Q Good morning, Mr. Cabot.

21 A Good morning.

22 Q Let's talk about what Mr. Vieira just left off
23 with with you, and let's take a look at Exhibit 2,
24 paragraph C on page 1.

25 A (Witness complies.)

1 first looked at them?

2 A A lot of delinquents, a lot of vacancy, a lot of
3 expenses.

4 Q Okay. And at some point in the due diligence,
5 did you have occasion to meet Mr. Austin?

6 A Yes. I flew out there and met Mr. Austin.

7 Q Any recollection when -- what time that might
8 have been?

9 A 2019. I don't have -- I don't have the dates.

10 Q And as you stand here today, sir, how many times
11 have you been at the park in Pocasset?

12 A Three or four.

13 Q And was that with the permission of Mr. Austin?

14 A Yes.

15 Q At all times.

16 A At all times.

17 Q And have you ever had occasion to talk to
18 residents at the park?

19 A Yes, many.

20 Q Okay. And at some point in time, is it fair to
21 say Crown indicated a willingness to purchase the park
22 from Mr. Austin?

23 A Yes.

24 Q And I'm going to ask you to look at what is
25 agreed exhibit Number 1.

1 Q So I'm now going to direct your attention,
2 please, to Exhibit 8.

3 A Exhibit what?

4 Q Exhibit 8. I'm sorry.

5 A (Witness complies.)

6 Q And I'm looking at a letter from attorney Phillip
7 Lombardo dated January 2020. Do you recognize that
8 sir?

9 A I do.

10 Q And do you recall when you received that, if at
11 all?

12 A I don't believe I received it, but I believe we
13 received a copy of it.

14 Q And what did you do, if anything, when you
15 received that letter?

16 A I believe we spoke with our attorney, Ted Farmer,
17 and then we started -- then I think I spoke to Phil
18 Austin.

19 Q Okay. And did you have occasion after receiving
20 this letter to go back to Pocasset Park?

21 A Yes.

22 Q And tell me about the first visit back,
23 approximately when that would have been?

24 A 2019, December I believe. You know, first it was
25 due diligence that we did -- I was on site for a

1 couple of days, and then after we -- receiving this
2 letter, and after, you know, a couple of weeks went
3 past, there was more -- more communication between
4 Phil, and we received -- residents phone calls, and
5 there was just a lot of misinformation floating
6 around.

7 And that's when we -- a couple of residents
8 wanted us to come out and actually speak with them.
9 And we -- I assembled myself and three other people
10 for the people, and we went out and spoke to
11 residents.

12 Q So understanding that this letter is dated
13 January 2, 2020 from Mr. Lombardo, can you tell us
14 when you think that follow-up visit might have
15 occurred at the park?

16 A It was probably -- probably the end of January/
17 February.

18 Q And was it at the park, or was it someplace else?

19 A We were on site visiting a handful of tenants,
20 and then I believe the next day or so we rented a hall
21 to accommodate more people and to have like an open
22 discussion or a forum, and that's when we invited all
23 the people at the park.

24 Q And I think we've heard Mr. Cabot testify that
25 that was well attended. Is that fair to say?

1 A Yes. Yeah. Yeah. There was probably 40 or 50
2 people there.

3 Q And what was the purpose of Crown being at that
4 meeting?

5 A Just to share our vision of what we were trying
6 to do, or what we -- what we propose, and then to
7 clear up miscommunication from other tenants spreading
8 rumors on what we do and what we don't do.

9 Q Okay. And did you make it known that it was your
10 intention to own and operate the park?

11 A Yes. That is always our intention, to own and
12 operate.

13 Q Okay. And there were other people from Crown
14 with you at that meeting; is that correct?

15 A That's correct.

16 Q And what happened as a result of that meeting to
17 your recollection?

18 A I believe we answered everyone's question, and I
19 think we -- you know, there's people for us, and there
20 were people against us. And hopefully -- you know,
21 our goal was to just clarify what our position was, so
22 they heard it from the horse's mouth.

23 Q Okay. And did you have people sign withdrawal
24 forms during that visit?

25 A During the meeting?

1 Q Okay. Let's talk about your trip at the end of
2 January 2020 where you and four other Crown
3 representatives went to the park. You spent what?
4 Five days there? Is that right?

5 A I believe something like that.

6 Q Something like that. Yeah. And during that
7 time, you, Mr. Biddlecome, part of what you did during
8 that trip was you went door to door in the community
9 and talked to residents, right?

10 A Yes.

11 Q And you took with you -- in those discussions,
12 you took that withdrawal form to those meetings,
13 didn't you?

14 A Yes.

15 Q And in the course of your discussions with the
16 residents, you asked them to sign the form, didn't
17 you?

18 A Well, you're jumping the gun. We explained our
19 position, answered their question. And if they wanted
20 to change their mind, we provided a form for them.

21 Q I see. So it was totally up to them. There was
22 zero solicitation. If they happened to say to you:
23 Hey, do you have that withdrawal form and the letter?
24 I want to sign it.

25 Is that how it worked?

1 A Well, we don't go to somebody and say: Here.
2 Please sign something.

3 We explain our position, answer any questions
4 they have. And then if you want it -- if you want to
5 change your mind, we have a withdrawal form.

6 Q Right. And you brought that up in those
7 meetings, right?

8 A I brought up what?

9 Q The withdrawal form.

10 A If they wanted to change their mind, we provided
11 a withdrawal form.

12 Q I see. The whole purpose of those -- of the
13 letter-writing campaign, and your trip, and talking to
14 the residents was to get them to sign those withdrawal
15 forms. Isn't that right? Wasn't that the goal?

16 A The goal was to educate the tenants on what our
17 goal was for the community, and how we wanted to
18 improve the community to make it a safe place to live.

19 Q And one of your goals was to get those withdrawal
20 form signed. Isn't that -- by as many people as you
21 could. Isn't that right, Mr. Biddlecome?

22 A If they wanted to change their mind after
23 listening to us, here's an opportunity to change your
24 mind, and you have to have it in writing. And yes, we
25 provided a withdrawal form.

1 A You have.

2 Q And so December 10, 2019, does this represent the
3 rent roll at the park on or about December 10, 2019?

4 A I'm having trouble seeing it to be honest with
5 you.

6 Q As am I. I know it's very light, so please take
7 your time.

8 A I'm sure it does, but it doesn't look like
9 everybody's on there.

10 Q Okay. At the bottom of --

11 A Yes. Okay.

12 Q Yeah.

13 A Yes.

14 Q All right. So is it fair to say the best of your
15 knowledge that represents the accurate rent roll at
16 the park on December 10, 2018?

17 A Yes.

18 Q Thank you. So you've been managing the park
19 since 2018. At some point was made available for
20 sale?

21 A We have always wanted to sell the park. We
22 wanted to sell it when it was in receivership. We
23 weren't allowed to -- or -- well, we were -- whatever.
24 It didn't happen. When we first took over, we had a
25 rent increase. Along with that rent increase, we sent

1 a notification that the park was for sale.

2 Q When was that approximately?

3 A I'm going to say March or April of '18 because we
4 immediately -- we knew we needed to do a rent
5 increase, so we immediately did that. It took 30 days
6 for it to, you know, take effect and all that.

7 Q If you could just explain very briefly, how it
8 works. I think we've heard testimony that you own the
9 land at the park, correct?

10 A Correct.

11 Q And when I say "you," I mean the trust.

12 A Yes.

13 Q And you lease those lots to people that own
14 manufactured homes. Is that fair to say?

15 A It is.

16 Q And do you have written leases with people in the
17 park?

18 A We do now. What -- we're regulated by law. When
19 we took over, there weren't any leases. So we raised
20 the rent pretty much right around -- I think it was
21 \$102. We were allowed to do that because there
22 weren't any leases. The leases are -- that are
23 required by the state state that you can only raise
24 the rent 6%. So that's what we've done since.

25 Q Would you call that a form of rent control?

1 this has to do with the case.

2 THE COURT: Yeah. I'm going to ask -- that
3 thought is rolling around in my head right now. What
4 -- how does this information help me, and in what way
5 does it help me decide this case?

6 MR. SULLIVAN: I -- well -- what I was trying to
7 establish going through the list is a lot of these
8 people aren't approved and aren't bona fide signatures
9 because they do not own a residence.

10 THE COURT: Okay.

11 MR. SULLIVAN: I just thought it would provide
12 some background, and maybe I've done that and I can
13 move on.

14 THE COURT: Okay. Does the statute require
15 ownership or -- is it ownership?

16 MR. SULLIVAN: I'm saying owner residents based
17 on the statute, and so we're going to distinguish
18 through those as we bring in people.

19 THE COURT: Well, what does the statute say?

20 MR. AYLESWORTH: The -- our interpretation of
21 the statute is consistent --

22 THE COURT: No, no, not your interpretation.
23 What does it say?

24 MR. AYLESWORTH: It says that -- that over 51%
25 of the resident owners must be members of the

1 association. And then the next section -- the next
2 subsection says that 51% or more of the residents have
3 to -- have to approve the exercise of the right of
4 first refusal.

5 THE COURT: Okay.

6 MR. AYLESWORTH: And I think it's been
7 understood. We don't dispute that that means that
8 owner residents for both sections they have to -- 51%
9 or more of the owner residents have to be members, 51%
10 or more of the owner residents have to support the
11 purchase and sale.

12 THE COURT: And that's your burden, right?
13 That's what we talked about; isn't that right?

14 MR. SULLIVAN: That's right, Your Honor.

15 THE COURT: All right. So he's now got a
16 witness on the stand who is helping me understand the
17 list of people who signed this, whether they are
18 resident owners.

19 MR. AYLESWORTH: Right. And we -- and he's gone
20 through the list and -- and that's -- that's not what
21 we're objecting about. The process and evicting
22 people --

23 THE COURT: I'm getting there. I'm with you on
24 that. I'm getting there.

25 MR. AYLESWORTH: But yes. That point --

1 commitment period, and all deposits shall be refunded
2 to the purchaser."

3 Have I read that correctly?

4 A Yes, sir.

5 Q And so fair to say that the HOA had a mortgage
6 contingency; if they didn't get their financing, they
7 got the deposit back. Is that correct?

8 A Yes, sir.

9 Q And the purchase and sale agreement that you had
10 with Crown had no such contingency, did it?

11 A I don't believe so.

12 Q Okay. Is that a significant term to you as the
13 seller of a property?

14 A It would be. Yes.

15 Q Okay. Are you familiar with Mr. Danforth, who
16 has been discussed here, from CDI?

17 A Yes. I've probably spoken to him a half a dozen
18 to a dozen times over the years.

19 Q And when did you first meet his acquaintance?

20 A I believe most of it was by phone call, and I'm
21 going to say it was before the receivership was over.
22 I'm going to say probably five or six years ago I had
23 my first conversation with him, but I can't swear to
24 that.

25 Q Why did he make contact with you?

1 A He knew we wanted to sell the park. I mean, it's
2 been known through the industry. I would go to the
3 mobile home association of Massachusetts, whatever the
4 name of it is, and I would stand up and say, "We want
5 to sell our park."

6 Q Okay. Fair enough. And was he making inquiry
7 for CDI, or on behalf of the residents of the park?

8 A I don't -- I just knew Mr. Danforth as -- to me
9 he was ROC, but I guess I'm wrong about that. He was
10 -- I just knew that he did financing. I think he
11 does private stuff also. He was interested in buying
12 the park.

13 Q Okay.

14 A Whether it was for an association, whether it was
15 for himself, I don't know. He really didn't want to
16 buy the park the way we wanted to sell it.

17 Q How did he want to buy the park?

18 A He didn't want to buy the back acreage. He only
19 wanted to buy the park itself. The back acreage
20 includes the treatment plant. So I mean, there could
21 have been three, or four, or five acres cut off of the
22 back part for the sale of the park, and then we would
23 have had the rest of it. But we thought it was
24 beneficial to whoever was going to buy the park that
25 they buy the back acreage to further develop the park.

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EXHIBITS: 38-42
PAGES: 203

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

BARNSTABLE SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

* * * * *
CROWN COMMUNITIES, LLC, *
*
Plaintiff *
*
v. * Docket Number 2072CV00083
*
PHILIP AUSTIN TRUSTEE OF *
THE CHARLES W. AUSTIN *
TRUST, ET AL., *
*
Defendants *
*
* * * * *

BEFORE: Honorable Michael Callan
Barnstable Superior Court
Barnstable, Massachusetts
August 16, 2022

APPEARANCES:

Attorney Walter B. Sullivan, Justin DuClos, Kayla
Sepulveda on behalf of the plaintiffs.

Attorney Christopher Viera on behalf of the defendant,
Philip Austin, Trustee of the Charles W. Austin Trust.

Attorney Thomas Aylesworth on behalf of the Pocasset
Park Association, Inc.

MARGARET MCDONOUGH, CVR
CERTIFIED COURT TRANSCRIBER

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JUSTINE SHOREY,				
By Mr. Sullivan	6		72	
By Mr. Aylesworth		48		75
By Mr. Viera		63		
ROBIN HARRIS,				
By Mr. Sullivan	76			
By Mr. Aylesworth		88		
By Mr. Viera		90		
CHERYL GOOD,				
By Mr. Sullivan	102			
JOANNE STRELLY,				
By Mr. Sullivan	106		114	
By Mr. Aylesworth		113		
ADAM HARRIS,				
By Mr. Sullivan	114			
ROSALIE MCDONALD,				
By Mr. Sullivan	120			
By Mr. Aylesworth		126		
DEREK EVERMAN,				
By Mr. Sullivan	127			
RHONDA BERNARD				
By Mr. Sullivan	134			
By Mr. Aylesworth		140		

1 and skip past the first letter from Mr. Lombardo.

2 A (Witness complies.)

3 I see the articles --

4 Q Past that --

5 A Yes. Okay. I do see it. Yeah.

6 Q -- to the first document marked "Petition of
7 residents to invoke right of first refusal under Mass.
8 General Laws Chapter 140, Section 32R. Is that a --

9 A Yes.

10 Q -- petition that was provided to you by those
11 folks at the meeting?

12 A Yes.

13 Q And by "those folks," I mean, Mr. Danforth or
14 Nora Goslin?

15 A Right. And there were some people at the meeting
16 who actually got up and walked over and signed --
17 signed some of the blanks because they were very
18 interested in this process.

19 Q Sure. And so -- so the people that signed right
20 there and then, was that as they came in and walked in
21 the door?

22 A Oh, no. That was after listening to a lengthy
23 explanation of what it was all about.

24 Q Understood.

25 A And what were you told about this form, if

1 anything?

2 A We were told that this was a petition that was
3 necessary to comply with the Chapter 140, 32R.

4 Q All right. And were you told all about how you
5 should go about getting signatures?

6 A Well, they really left it up to us because we
7 know our residents best. They suggested that we talk
8 to our neighbors. They suggested that we introduce to
9 our neighbors who weren't present what we'd heard and
10 talk to them and find out if they were interested.

11 Q But you didn't get any signatures, right?

12 A I personally did not only because I wasn't -- I
13 was there on a weekend, and I was away at work for a
14 week. Yes.

15 Q Right. And so you have no knowledge as to what
16 was said to residents when signatures were obtained,
17 correct?

18 A I can -- I can just say I was not present.
19 Right.

20 Q Sure.

21 A I only -- go ahead.

22 Q Do you have a recollection of who principally
23 obtained signatures?

24 A My knowledge is that some of the people on the
25 steering committee walked around and got signatures.

1 Q And there -- there were only -- and so to your
2 knowledge they just went around and spoke to
3 residents, correct?

4 Q That is my knowledge. Yes.

5 Q And they didn't do anything to make sure they
6 were an owner of the home to your knowledge.

7 A I can't even address that because I don't know if
8 that was in their minds. I mean, we -- these are
9 people who lived in these houses. We had seen them
10 living there, coming and going every day. So we
11 approached the resident of that house.

12 Q Right. But you're aware there's people that live
13 in the park and live in homes that don't own them
14 correct?

15 A There -- I do know that now, that there are a
16 few. Yes.

17 Q Okay. Like Mr. Komo who lives in your unit.
18 He's not an owner, correct?

19 A No, he's not.

20 Q And he's lived there for three years.

21 A Yes.

22 Q Right. All right. So at some point in time,
23 signatures of residents were obtained on these
24 petitions; is that correct?

25 Q Yes. And what happened to the petitions then?

1 A Nora Goslin performed some of these. As we got
2 membership agreements, I would copy and send them over
3 to her, and then I would review this to be sure that
4 they were valid.

5 Q So was this based off -- to your knowledge was
6 this based off people signing up on the membership
7 agreement --

8 A Yes.

9 Q -- and sending it back? And was it sent back to
10 you?

11 A I'm sorry?

12 Q Were the membership agreements sent back to you?

13 A They -- again, more -- many of them were
14 collected at the January 11 meeting. And some of them
15 came -- most of them came to the January 11 meeting,
16 and some came subsequently to that. Some of them --
17 they would walk across the street to a neighbor and
18 say: Hey, do you want to join here? Can you hand
19 this in?

20 And they would give them to me.

21 Q And was there any effort to verify these
22 addresses or these names by you?

23 A In what respect?

24 Q Did you check to make sure the -- like, for
25 instance, Ellen Bragg lived at 5 First Street?

1 A Yes. So I compared them to the rent roll that
2 was provided to us by Philip Austin.

3 Q So did you check -- that's what I'm asking. Did
4 you do anything to check --

5 A Yes.

6 Q And what did you do?

7 A I verified this list to the rent roll.

8 Q Oh, okay.

9 A Yes.

10 Q So how did you get the rent roll?

11 A Philip Austin provided it. It was -- it was a
12 December 2019 rent roll.

13 Q Okay. And how -- and how did you get it from
14 Phillip Austin, if you recall?

15 A I -- it was -- it was provided to me not directly
16 from him.

17 Q Okay. So who provided it to you?

18 A I honestly don't remember. But this was part of
19 what he provided as part of the purchase and sale
20 agreement to disclose these things.

21 Q I'm going to ask you to look at Exhibit 6.

22 A Sure. 6. Okay. One moment.

23 Q And that's a letter from Mr. Austin's attorney.

24 A Okay.

25 Q And there's a reference in here pretty far into

1 the letters, Exhibit D, and it says "Rent roll."

2 A Okay.

3 MR. SULLIVAN: Judge, can I approach the witness
4 to assist?

5 A I'm on Exhibit 6, and it's how many pages in?

6 Q I'm sorry. It's a letter --

7 A Sure.

8 Q -- Exhibit 6, a letter from Mr. Krause.

9 So looking at Exhibit D marked "Rent roll."

10 A Yeah.

11 Q I don't see that the rent roll was included in
12 this letter. Do you recall if it was when you
13 received this letter?

14 A I don't recall.

15 Q Okay. And you don't know if it's the rent roll
16 that you used to verify the signatures on the
17 membership agreement?

18 A I can't say that because I haven't -- I don't
19 know. The only one I saw is the one I saw.

20 Q Okay. And you don't know how you came into
21 possession of it?

22 A I just don't recall.

23 Q Yeah. So you wouldn't know if it was accurate?

24 A I -- I made the assumption it was accurate. Yes.

25 Q Yeah. But you wouldn't know if they were -- if

1 they were owners, residents or if they were up to date
2 in rent, and where -- you just seem to think it came
3 from Mr. Austin. Is that fair to say?

4 A Well, yes, because it says right at the top
5 "Charles W. Austin Trust tenant rent roll, December
6 2019 to December 2019."

7 Q I'm sorry. What are you referring to? I
8 apologize.

9 A This is Exhibit 7?

10 Q Okay. So you had this -- this is the rent roll
11 you had?

12 A Yes. That's the one I used to verify.

13 Q Okay. And you used -- and again, I apologize for
14 belaboring this, but --

15 A That's okay.

16 Q -- you don't recall exactly how you came into
17 possession of it?

18 A I just don't recall how I came -- I'm sorry.

19 Q But what you do recall is taking the membership
20 agreement and comparing it to that.

21 A I did.

22 Q All right. Now directing your attention to
23 Exhibit 16, please.

24 A Sure.

25 Q In front of you is a letter from Blue Hill

VOLUME: III
EXHIBITS: NONE
PAGES: 30

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

BARNSTABLE SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

* * * * *
CROWN COMMUNITIES, LLC, *
*
Plaintiff *
*
v. * Docket Number 2072CV00083
*
PHILIP AUSTIN TRUSTEE OF *
THE CHARLES W. AUSTIN *
TRUST, ET AL., *
*
Defendants *
*
* * * * *

BEFORE: Honorable Michael Callan
Barnstable Superior Court
Barnstable, Massachusetts
August 17, 2022

APPEARANCES:

Attorney Walter B. Sullivan, Justin DuClos, Kayla
Sepulveda on behalf of the plaintiffs.

Attorney Christopher Viera on behalf of the defendant,
Philip Austin, Trustee of the Charles W. Austin Trust.

Attorney Thomas Aylesworth on behalf of the Pocasset
Park Association, Inc.

MARGARET MCDONOUGH, CVR
CERTIFIED COURT TRANSCRIBER

I N D E --

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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CYNTHIA PASTONE,

By Mr. Sullivan	11			
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By Mr. Viera		16		
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1 Q And how long have you lived at 7 First (sic)
2 Street?
3 A Thirteen years.
4 Q And that's the Pocasset Home Park, correct?
5 A Right.
6 Q And Are you the owner of that home?
7 A Yes.
8 Q And does anybody currently reside there with you?
9 A No.
10 Q Okay. And are you employed?
11 A No.
12 Q And are you -- do you have any awareness of some
13 effort by the park to be sold?
14 A No.
15 Q All right. Do you know Mr. Austin?
16 A Yes.
17 Q And who is he?
18 A He is the owner of mobile home park.
19 Q And are you aware that there was an effort by
20 residents in the park to purchase the park?
21 A No.
22 Q Not really. How about Crown? Are they familiar
23 to you?
24 A No.
25 Q At some point in time, --

1 Q I would ask you to look down the line at number
2 4, and there's a signature on there that says "Cynthia
3 Pastone, Rick Damon 7 Third Street, Pocasset, Mass."
4 Have I read that correctly?

5 A Yes.

6 Q And the Cynthia Pastone, is that your signature?

7 A Yes. I think so. I don't have my glasses on.

8 Q Okay. So you signed this form?

9 A As far as I know -- actually, I don't know.

10 Q Do you recall signing this form?

11 A No.

12 Q Okay. So do you recognize -- so you have no
13 recollection of signing this form?

14 A No.

15 Q Do you recall people coming to you asking you to
16 sign it?

17 A No.

18 Q And did you authorize anybody to sign it?

19 A No.

20 Q And you are the owner of the home, correct?

21 A Yes.

22 Q That's correct?

23 A Yes.

24 Q Okay.

25 MR. SULLIVAN: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes.

3 Q And I placed in front of you, Ms. Pastone, a
4 document entitled, "Withdrawal form." Have you seen
5 that form before?

6 A No.

7 Q Okay. And the writing in the section, do you
8 recognize that by any chance?

9 A I'm not sure. I really don't have my glasses on.

10 THE COURT: Do you have glasses nearby?

11 THE WITNESS: No.

12 THE COURT: Okay.

13 THE WITNESS: Unfortunately. I can see far away
14 but not close.

15 THE COURT: Okay.

16 Q I could lend you my cheaters if that would help.

17 A Fine.

18 Q Does that help?

19 A Yes.

20 Q And do you recognize that document?

21 A I read -- I don't recognize it, but that's --

22 Q Is the handwriting in your writing?

23 A No.

24 Q It's not. How about the signature at the bottom.
25 Do you recognize that?

1 A No.

2 Q Is it your signature?

3 A No.

4 Q Okay. Now I'm going to ask you again to look at
5 this now that you have glasses on.

6 A Yes.

7 Q Is that your signature on the petition to revoke
8 the right of first refusal?

9 A No.

10 MR. SULLIVAN: I don't have anything further,
11 Judge.

12 I can leave those with you because Mr. Aylesworth
13 might have a few questions.

14 THE COURT: Mr. Aylesworth, anything?

15 MR. AYLESWORTH: No questions, Your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Viera.

18 MR. VIERA: I just have one very brief question.

19 THE COURT: All right.

20 CROSS-EXAMINATION BY MR. VIERA:

21 Q Ms. Pastone, good morning.

22 A Good morning.

23 Q My name is Chris Vieira. I represent the Charles
24 W. Austin Trust, Phil Austin as the trustee. You
25 mentioned that you're aware of Mr. Austin as the

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EXHIBITS: NONE
PAGES: 180

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

BARNSTABLE SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

* * * * *
CROWN COMMUNITIES, LLC, *
*
Plaintiff *
*
v. * Docket Number 2072CV00083
*
PHILIP AUSTIN TRUSTEE OF *
THE CHARLES W. AUSTIN *
TRUST, ET AL., *
*
Defendants *
*
* * * * *

BEFORE: Honorable Michael Callan
Barnstable Superior Court
Barnstable, Massachusetts
August 18, 2022

APPEARANCES:

Attorney Walter B. Sullivan, Justin DuClos, Kayla
Sepulveda on behalf of the plaintiffs.

Attorney Christopher Viera on behalf of the defendant,
Philip Austin, Trustee of the Charles W. Austin Trust.

Attorney Thomas Aylesworth on behalf of the Pocasset
Park Association, Inc.

MARGARET MCDONOUGH, CVR
CERTIFIED COURT TRANSCRIBER

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ANDREW DANFORTH,				
By Mr. Sullivan	6		105	
By Mr. Aylesworth		74		113
By Mr. Viera		94		

1 shutdown.

2 Q Okay. So let's talk about the next one. Do you
3 recall -- if the first one was sometime in December
4 2018, when the next one would have occurred?

5 A It was early January.

6 Q Excuse me?

7 A Early January, sir.

8 Q Okay.

9 A I -- I know it was in early January, but I didn't
10 memorize the dates.

11 Q And on those petitions that you were referring
12 to, did CDI obtain any of the signatures?

13 A No.

14 Q And to your knowledge, who got those signatures?

15 A To my knowledge, it was -- it was either -- there
16 were a bunch at the first meeting. I'm sure there was
17 some of the second meeting. And there was one weekend
18 where some of the steering committee walked door to
19 door and got the rest. It was a very simple process.

20 Q And in Pocasset, do you know who the steering
21 committee was?

22 A It -- basically it was the board of -- you know,
23 the board of -- it was the incorporating board, so
24 that would be Justine Shorey, I know Robin, and I
25 don't remember everybody's last name as I deal with

1 THE COURT: All right. So we don't know whether
2 anybody ever certified that 40 homeowners occupied
3 homes or whatever.

4 THE WITNESS: No. The last list clearly
5 exceeded that.

6 THE COURT: That wasn't --

7 THE WITNESS: But that didn't have the
8 certification.

9 THE COURT: I know. All right. Thank you.

10 MR. SULLIVAN: Thank you, Your Honor.

11 Q So going back a little bit in time in -- on
12 January 2nd according to the exhibit, Mr. Lombardo
13 indicated that the HOA intended to invoke the right of
14 first refusal, correct?

15 A Correct.

16 Q And signatures had been gathered, correct?

17 A Correct.

18 Q And that those signatures were on the petition to
19 invoke the right of first refusal, yes?

20 A Correct. Yes.

21 Q And that's not something that CDI obtained the
22 signatures, correct?

23 A That is correct. We did not.

24 Q And you didn't verify whether they were
25 homeowners, or residents, or homeowner residents,

1 correct?

2 A No. I'm not sure of that. It may have been done
3 by somebody else, but we did not affirm a list --

4 Q You didn't personally do it.

5 A We didn't -- we don't have a list at that point
6 from the seller.

7 Q And you don't keep membership numbers, do you?

8 A Oh, we keep membership numbers.

9 Q So that you do it rather than the HOA?

10 A No, no. the HOA does it, but they provide it to
11 us.

12 Q I apologize. I haven't been clear. When I say
13 "you," and I -- we've been using the --

14 A Yes. CDI.

15 Q I'm talking about CDI.

16 A Okay.

17 Q CDI is not in the business of obtaining members
18 to sign the membership agreement, correct?

19 A No.

20 Q And it gets reported to you by the HOA: This is
21 what the HOA has.

22 A Correct.

23 Q Okay. And as of January 2nd when Mr. Lombardo
24 provided notice, to Mr. Austin that the HOA wanted to
25 invoke the right of first refusal, was it possible for

1 MR. SULLIVAN: Just a few, Your Honor.

2 REDIRECT EXAMINATION BY MR. SULLIVAN:

3 Q Mr. Danforth, again with respect to the petition,
4 I think you've indicated that that's a form you've
5 used in other efforts on CDI's behalf here in
6 Massachusetts, correct?

7 A Yes.

8 Q And the form has been modified periodically?

9 A Yes. It's -- some verbiage has been added to it.
10 Yes.

11 Q And in what way if you can just sort of briefly -
12 -

13 A The verbiage at the top has been expanded just to
14 give -- to make sure that they're stating the -- I
15 have to find it. What -- what number was -- I should
16 have them memorized by now. Is that 8?

17 Q It is Exhibit 8 in the middle, sir.

18 A Okay.

19 Q And I should have directed you.

20 A I've got them memorized. Okay. And I can't
21 remember the time line, but it's -- I mean, the whole
22 the whole paragraph at the top started as two or three
23 lines and has expanded over time. And we've -- we
24 find, you know, -- the value of these communities now,
25 you know, we find that we're in litigation quite a bit

1 like this, and so we've built it out because of that.

2 Q Thank you. And so I think your testimony was
3 it's been modified as a result of litigation; is that
4 correct?

5 A Well, it's not because somebody said you should
6 do this out of litigation. It's mainly like you come
7 back from litigation. We've -- essentially all of
8 those, and we've said maybe we should have this a
9 little broader or what have you.

10 Q I think you've also indicated, sir, that there's
11 been efforts that you've gone into parks where people
12 have opted not to move forward, correct?

13 A Yeah. The opt out about 20% of the time.

14 Q Okay. And are you currently involved in any
15 efforts to assist homeowners to buy a park in
16 Massachusetts?

17 A Yes.

18 Q Where?

19 A Wareham, Belchertown -- I'm sure there might be
20 others that are under the radar. But there are
21 others.

22 Q Have you used a similar form in those efforts?

23 A Yes.

24 Q Okay. And how about Easton? Are you still
25 involved in that effort?

1 A No, I'm not.

2 Q Okay. And was a form used in the Easton
3 transaction?

4 A It was.

5 Q And was it similar to the form used here?

6 A Yes.

7 Q And did that form indicate whether someone was a
8 resident or an owner?

9 A That form was modified. I was not directly
10 involved in the -- but that form was modified for that
11 situation because it was a receivership.

12 Q Okay. But to answer the question, to your
13 knowledge did it indicate whether somebody signing --

14 A Yes.

15 Q -- on was a resident or an owner?

16 A Yes.

17 Q It did. And -- but this one doesn't indicate
18 that, does it in this case?

19 A No. It doesn't actually. No.

20 Q Okay

21 MR. SULLIVAN: I don't have anything further,
22 Your Honor.

23 THE COURT: Anything further, Mr. Aylesworth?

24 MR. AYLESWORTH: Nothing further, Your Honor.

25 THE COURT: Mr. Viera, are you all set?

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NOTICE TO TENANTS REQUIRED UNDER M.G.L. CHAPTER 140, SECTION 32R

November 20, 2019

VIA CERTIFIED MAIL RETURN RECEIPT TO ALL RESIDENTS

To: Each of the Residents of the Park at Pocasset ("Pocasset")

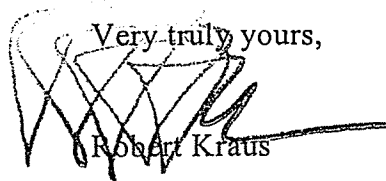
Dear Resident:

This office represents The Charles W. Austin Trust (the "Owner"), the owner of Pocasset, which has entered into an Agreement with CROWN COMMUNITIES, LLC for the sale of Pocasset. Pocasset is being sold to CROWN COMMUNITIES, LLC for \$3,800,000.00 (the "Agreement"), **based on the terms of the Agreement attached.**

This notice and your rights relating to a right of first refusal are set forth in G.L. ch. 140, Section 32R. Your rights of first refusal relate to "a group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community" and who submit evidence of such percentage involvement and such persons "submit to the owner a proposed purchase and sale agreement ... on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer...". G.L. ch. 140, Section 32R(c). **A copy of G.L. ch. 140, Section 32R is attached for your review and consideration.** As noted above, the Agreement is attached in full with exhibits so that all terms of the transaction are being known to you in connection with the statutory requirements.

Please contact me if you have any questions or require any additional information.

Very truly yours,



Robert Kraus

RK/k

Attachment – (1) Purchase and Sale Agreement with exhibits
(2) G.L. ch. 140, Section 32R

cc: Clients

Board of Health, Town of Bourne (via certified mail r/r)

Office of the Attorney General, Daniel Less, Esq., AAG (via certified mail r/r)

Massachusetts Dept. of Housing and Community Development (via certified mail r/r)

CHAPTER 140: SECTION 32R SALE OR LEASE OF MANUFACTURED HOUSING COMMUNITY; HOME OWNERS' ASSOCIATION; NOTICE; RIGHT OF FIRST REFUSAL

(a) A manufactured housing community owner shall give notice to each resident of the manufactured housing community of any intention to sell or lease all or part of the land on which the community is located for any purpose. Such notice shall be mailed by certified mail, with a simultaneous copy to the Attorney General, the Director of Housing and Community Development, and the local board of health, within 14 days after the date on which any advertisement, listing, or public notice is first made that the community is for sale or lease and, in any event, at least 45 days before the sale or lease occurs; provided, that such notice shall also include notice of tenants' rights under this section. (b) Before a manufactured housing community may be sold or leased for any purpose that would result in a change of use or discontinuance, the owner shall notify each resident of the community, with a simultaneous copy to the Attorney General, the Director of Housing and Community Development, and the local board of health, by certified mail of any bona fide offer for such a sale or lease that the owner intends to accept. Before any other sale or lease other than leases of single lots to individual residents, the owner shall give each resident such a notice of the offer only if more than 50% of the tenants residing in such community or an incorporated home owners' association or group of tenants representing more than 50% of the tenants residing in such community notifies the manufactured housing community owner or operator, in writing, that such persons desire to receive information relating to the proposed sale or lease. Any notice of the offer required to be given under this subsection shall include the price, calculated as a single lump sum amount which reflects the present value of any installment payments offered and of 14 any promissory notes offered in lieu of cash payment or, in the case of an offer to rent, the capitalized value of the annual rent and the terms and conditions of the offer. (c) A group or association of residents representing at least 51% of the manufactured home owners residing in the community which are entitled to notice under Paragraph (b) shall have the right to purchase, in the case of a third-party bona fide offer to purchase that the owner intends to accept, or to lease in the case of a third-party bona fide offer to lease that the owner intends to accept, the said community for purposes of continuing such use thereof, provided it (1) submits to the owner reasonable evidence that the residents of at least 51% of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement or lease agreement on substantially equivalent terms and conditions within 45 days of receipt of notice of the offer made under subsection (b) of this Section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement or lease, and (4) closes on such purchase or lease within an additional 90 days after the end of the 90-day period under Clause (3). No owner shall unreasonably refuse to enter into, or unreasonably delay the execution or closing on a purchase and sale or lease agreement with residents who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of an offer for which notice is required to be given pursuant to Paragraph (b). Failure of the residents to submit such a purchase and sale agreement or lease within the first 45-day period, to obtain a binding commitment for financing within the additional 90-day period or to close on the purchase or lease within the second 90-day period, shall serve to terminate the rights of such residents to purchase or lease the manufactured housing community. The time periods herein provided may be extended by agreement. Nothing herein shall be construed to require an owner to provide financing to such residents except to the extent such financing would be provided to the third party offeror in the case of a sale or lease for a use which would result in a change of use or discontinuance or to prohibit an owner from requiring such residents who are offering to lease

a community to provide a security deposit, not to exceed the lesser of one-year's rent or the amount which would have been required to be provided by the third-party offeror, to be kept in escrow for such purposes during the term of the lease. A group or association of residents which has the right to purchase hereunder, at its election, may assign its purchase right hereunder to the city, town, housing authority, or agency of the Commonwealth for the purpose of continuing the use of the manufactured housing community. (d) The right of first refusal created herein shall inure to the residents for the time periods hereinbefore provided, beginning on the date of notice to the residents under Paragraph (b). The effective period for such right of first refusal shall obtain separately for each substantially different bona fide offer to purchase or lease the community, and for each offer substantially equivalent to an offer made more than three months prior to the later offer; provided however, that in the case of a substantially equivalent offer made by a prospective buyer who has previously made an offer for which notice to residents was required by said Paragraph (b), the right of first refusal shall obtain only if such subsequent offer is made more than six 15 months after the earlier offer. The right of first refusal shall not apply with respect to any offer received by the owner for which a notice is not required pursuant to said Paragraph (b). No right of first refusal shall apply to a government taking by eminent domain or negotiated purchase, a forced sale pursuant to a foreclosure by an unrelated third-party, transfer by gift, devise or operation of law, or a sale to a person who would be an heir at law if there were to be a death intestate of a manufactured housing community owner. (e) In any instance where the residents of the manufactured housing community are not the successful purchaser or lessee of such manufactured housing community, the seller or lessor of such community shall provide evidence of compliance with this section by filing an affidavit of compliance with the Attorney General, the Director of Housing and Community Development, the local board of health, and the official records of the county where the property is located within seven days of the sale or lease of the community. Any lease of five years or less shall specifically require that such lessee shall not discontinue or change the use of the manufactured housing community during the term of such lease. (f) In any instance of a sale or lease for which a notice from the owner of the manufactured housing community is not required to be, and is not, given under Paragraph (b) and within one year of such sale or lease the new owner or lessee delivers a notice of change of use or discontinuance under Paragraph (8) of Section 32L, such notice shall provide each tenant in the manufactured housing community with at least four years prior notice of the effective date of the proposed change of use or discontinuance.

**PURCHASE AGREEMENT FOR
THE PARK AT POCASSET**

THIS PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of the Effective Date (hereinafter defined) by and between Crown Communities, LLC, a Wyoming limited liability company, its assigns or an entity to be formed ("Purchaser" or "Buyer") and the Charles W. Austin Trust, a Massachusetts trust ("Seller").

RECITALS:

A. Seller is the owner of a manufactured home commonly known as Pocasset Mobile Home Park located at 141 Barlow's Landing Road, Bourne, MA 02539, Parcel #39.0-065.0C, and adjacent land to the south Parcel #44.0-014.00 (except as provided herein, and with such exclusions and requirements such adjacent land is referred to herein as the "Adjacent Parcel", all more particularly described in Exhibit "A" (legal descriptions to be supplied by Seller and made a part hereof (collectively the Park at Pocasset and Adjacent Parcel are jointly referred to as the "Real Estate");

B. Seller is retaining approximately five (5) acres of the Adjacent Parcel as described more fully on said Exhibit A; Seller shall provide to Purchaser, subject to this Agreement, an easement over the Seller-retained five (5) acres of Lot 149 and Lot 3 (the "Easement"), and Buyer shall remove the test well from Lot 117 with 60 days notice from the Seller to Purchaser (even after Closing)¹. This obligation shall survive the closing of this transaction and the execution and delivery of the documents herein provided in connection with this transaction. Purchaser shall provide to Seller in a form acceptable to it, an easement and frontage on 5th Street for Lot 117; and

C. Seller desires to sell and Purchaser desires to purchase the Real Estate and mobile home park (the "Transaction"), in accordance with and subject to the terms and conditions hereinafter set forth, and subject to Massachusetts laws and regulations, including but without limit, the right of first refusal accorded to residents of manufactured housing communities under MGL ch. 140, Section 32R.

CONSIDERATION AND AGREEMENT:

IN CONSIDERATION of the mutual covenants and agreements herein contained and of the benefits to be derived, receipt whereof is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Offer. Purchaser hereby offers and agrees to purchase the Real Estate (subject to the exclusions noted above and herein as more particularly described on Exhibit A attached hereto), together all improvements and appurtenances, easements,

¹ It is understood and acknowledged that per MassDEP, three (3) test wells are necessary in order to comply with Massachusetts laws and regulations; only one current test well, on Lot 17, is not on the property being hereby transferred and if the MassDEP continues to require 3 test wells, Purchase will work diligently with MassDEP to find an alternative location for such test well on the property being purchased hereby.

Quitclaim Deed conveying fee simple title to Purchaser, free and clear of liens or encumbrances save: (i) the lien of real estate taxes which are not yet due and payable; (ii) zoning ordinances and other applicable statutes, ordinances, rules and regulations pertaining to the operation of the Subject Premises; and (iii) such other encumbrances which are disclosed in the Title Commitment and Survey and which are accepted by Purchaser pursuant to Section 4.C hereof (collectively "Permitted Encumbrances"). Any existing mortgages and other liens shall be discharged at Closing, with Seller being responsible for any prepayment penalties thereon.

4. Evidence of Title and Survey.

A. As evidence of Title, within ten (10) days after Seller's Execution and delivery of this Agreement, the Title Company will supply a Title Commitment for an A.L.T.A. fee owner's policy of title insurance (the "Title Commitment") without standard exceptions and with GAP coverage thorough date of recordation naming Purchaser or its assigns as the insured, in the amount of the Purchase Price for the Subject Premises, along with copies of documents affecting title. The Title Company shall agree to insure the title in the condition required hereunder as fee simple title. The Title Company shall, at the time of Closing, deliver a "marked-up" policy of Title Insurance pursuant to the Title Commitment. The cost of the searches, Title Commitment and Title Insurance Policy shall be paid for by Purchaser.

(i) Within twenty-one (21) days of the Effective Date, unless provided by Seller to the extent that such document exists, Seller and Purchaser shall share equally the cost and expenses incurred to obtain any required updates and/or recertifications to any survey, including a new Survey, except that Seller shall be responsible for survey costs and any other costs associated with establishing all new easements and parcel splits.

B. Purchaser shall have fifteen (15) calendar days following the receipt of the last of the title commitment, copies of documents affecting title and Survey to make objection to the title or Survey ("Title Objection Period"). If Purchaser does not raise any title objections within the Title Objection Period, both the title and survey shall be deemed approved and accepted by Purchaser. If such objection(s) to the title or survey is/are made, based upon a written opinion of Purchaser's attorney, which must be received by Seller no later than 5:00 p.m. on the date that is fifteen (15) days following the Title Objection Period, indicating that title or survey is/are not in the condition required for performance hereunder, Seller shall have up to thirty (30) days from the date notified in writing of the particular defects claimed, either to (1) remedy the title, and obtain title insurance as required above, or (2) inform Purchaser of its intention to not remedy the title ("Cure Notice Period").

(i) If the Seller remedies the survey and/or title or shall obtain such title insurance prior to the expiration of the Cure Notice Period, the Purchaser agrees to complete the sale within fifteen (15) days of written notification thereof, but no sooner than the Closing Date hereinafter specified.

disclosed on the Rent Roll. There has been no known organized "rent strike" or other tenant organized protest of rents or conditions at the Subject Premises.

D. From the Effective Date until the Closing Date, Seller shall operate, repair and maintain the Subject Premises in the same manner as the same have heretofore been maintained and shall permit no wasting of the Subject Premises. Seller shall have the right to enter into occupancy or written rental arrangements (in the ordinary course of Seller's business). Seller shall not receive more than one month's prepaid rent and security deposit under such leases or rental agreements. Seller shall not transfer any of the Subject Premises, create any lien or encumbrance thereon, grant any easements or rights of way, or enter into any new contract which is not cancelable on and as of the Closing Date, except in the ordinary course of business or in connection with financing the Park in an amount of no more than 40% of the Purchase Price, which encumbrance shall be paid in full at Closing..

E. Seller's financial information to be provided to Purchaser under Section 7.C hereof, together with all other of Seller's books and records provided or to be provided to Purchaser are or will be true, correct and genuine in all material respects and fairly reflect the financial condition of the Subject Premises and Exhibit "C," to be attached hereto by Seller, contains a list of all service contracts affecting the Subject Premises to which Purchaser must assume; provided, however, that such information is subject to the acknowledgment that such information dates from February 2018 when the Receivership terminated.

F. Seller is not a "foreign person" as defined in §1445(f)(3) of the Internal Revenue Code and regulations promulgated thereunder, which Seller shall so certify at Closing.

G. All licenses and permits required by the Commonwealth of Massachusetts, Barnstable County and Bourne and necessary to operate the Subject Premises as a manufactured home community have been obtained, are valid and are in full force and effect and will be assigned, to the extent allowed by law, to Purchaser at Closing.

H. Based on the report of CHA Companies, Inc., dated August 28, 2018 (provided to Purchaser), to the best of Seller's knowledge information and belief, there are no defects in the water distribution system or sewage system of the Subject Premises, the water supplied to the Subject Premises is supplied by Bourne and is sufficient to meet the needs of the tenants of the Subject Premises, and meets all minimum health standards imposed by all governmental agencies having jurisdiction. The water system and all mechanical systems serving the Subject Premises are, to the best of Seller's knowledge, in sound operating condition, free from hidden or latent defects, and are adequate in size and performance to properly serve the needs of the existing mobile home park.

notice thereof via facsimile delivery or mail by the last day of the Inspection Period, and Purchaser shall then receive a refund of its Deposit and be relieved of any and all liability hereunder except as to Purchaser's indemnity obligations under this Section 7.B. Purchaser shall have no obligation to notify Seller of any reason for such rescission. In the event any portion of the Subject Premises is disturbed or altered by virtue of Purchaser's investigations, Purchaser shall promptly, at its sole cost and expense, restore the Subject Premises to substantially the same condition that existed prior to such disturbance or alteration and Purchaser shall return to Seller any information concerning the Subject Premises obtained from Seller. Purchaser shall indemnify and hold harmless Seller from and against any and all claims, liabilities, suits, causes of action, obligations, damages, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from the inspection activities of Purchaser or its agents, employees or contractors, including any construction liens filed by any of Purchaser's contractors, subcontractors or suppliers in connection with any such inspection activities.

C. Within twenty (20) business days after the Effective Date, Seller shall furnish Purchaser with copies of all items referenced on Exhibit "E" attached hereto, that have not heretofore been supplied and which Seller has in its possession.

8. Closing. Purchaser and Seller shall close this transaction on a mutually agreeable date, within 30 days of the expiration of the Inspection Period. The Closing shall take place through escrow with the Title Company. At Closing, the parties shall execute such documentation as may be necessary to complete this Transaction, in such form and content as is reasonably satisfactory to Purchaser and Seller including but not limited to providing the following documents to one another:

(A) Seller shall execute and deliver to the Title Company a recordable quitclaim deed (one typically used in Massachusetts) conveying fee simple title to the Subject Premises, subject only to the Permitted Exceptions,

(B) Seller shall deliver to Purchaser an Assignment of Seller's interest in contracts,

(C) Seller shall deliver to Purchaser the original tenant occupancy agreements, contracts and documents in Seller's possession, if any,

(D) Seller shall deliver to Purchaser an Assignment of Seller's Interest as Lessor in and to the Tenant Leases/Tenancies,

(E) Seller shall deliver to Purchaser possession of the Subject Premises,

(G) Seller shall provide a title insurance policy for the Subject Premises in an amount of the Purchase Price,

(H) Seller shall deliver to Purchaser such evidence of the authority and capacity of Seller and its representatives as the Title Company may require,

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A. All taxes and special assessment installments of whatever nature and kind which have become a lien on the land or are due and payable as of the date of Closing shall be paid and discharged by Seller. Current real and personal property taxes shall be prorated on the due date basis of the taxing authority on the basis of a 365-day year; Seller shall be responsible for taxes up to but not including the day of Closing. Seller shall pay all State and County and local transfer taxes and revenue stamps due upon Closing or required to be paid upon recording of the Warranty Deed or with respect to the conveyance or title transfer of any vehicles or equipment included in this Transaction.

B. All prepayment of rent, tenant security deposits, and other deposits of whatever nature and kind whatsoever shall be prorated and credited to Purchaser and adjusted as of the date of Closing based upon the actual number of days in the month of Closing, with Purchaser being credited for rents on the day of Closing. All other contractual payments such as cable service exclusive agreements, revenue share, or similar agreements shall be prorated over the term. In no event shall Purchaser be charged with any past due rentals, which if collected by Purchaser shall be remitted to Seller after all current rents and other charges have been satisfied, and less Purchaser's reasonable costs of collection, including attorneys' fees. Notwithstanding anything herein to the contrary, Purchaser is assuming no responsibility whatsoever for the collections of such past due rentals. Seller shall have no surviving rights after Closing to collect past due rentals from existing tenants. Seller may continue any collection actions, for Seller's benefit, against former tenants. If any tenant lease provides for the rent payable by the tenant after the Closing Date to be less than the pro forma or budgeted rent for such home site, as set forth on the Rent Roll for the Subject Premises as of the date of Closing, whether as a result of free rent, reduced rent or any other form of rent concessions (in each case, a "Rent Concession"), then, at Closing, Purchaser shall be entitled to a credit from the Seller in an amount equal to the sum of all such Rent Concessions made to tenants attributable to the period after the Closing Date. In the event that Purchaser acquires the Park during the midst of a summary process eviction commenced by the Seller, then Purchaser shall reimburse Seller up to \$500 for any fees, costs and legal fees incurred to that point, as an adjustment to the Purchase Price, and thereafter determine its course of conduct with respect to such action. No reduction of rent shall be adjusted if the Seller has commenced actions to recoup rents prior to the Closing on this transaction.

C. Seller shall pay all outstanding and current amounts owed to utility companies and service providers through the date of Closing. To the extent that the amounts of any charges and expenses are unavailable on the closing date, an adjustment of these items will be made thirty (30) days after closing. This Agreement shall include an obligation of all parties to cooperate in pre-closing and post-closing to provide any and all documents or other information in conformance with the obligations herein created and/or intended to be created.

10. No Assumption of Liabilities. Except as to the contracts which are identified on Exhibit "C" and which Purchaser must assume, such as any agreement

brokers who would be entitled to a commission with regard to this transaction, and each party indemnifies the other against any such claim.

16. Notices. *Unless specifically modified by the terms of another section of this Agreement*, any notices, demands or requests required or permitted to be given hereunder must be in writing and shall be deemed to be given (i) when hand delivered, or (ii) one (1) business day after delivery to Fed Ex or similar overnight service for next business day delivery, or (iii) three (3) business days after deposit in the U.S. mail first class postage prepaid, or (iv) when sent by facsimile or telecopier transmission, if such transmission is immediately followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows:

If to Seller:

Charles W. Austin Trust
Attention : Philip Austin, Trustee
310 Barlow's Landing Road

Pocasset, MA 02559
Phone:

Fax:
email:

With a copy to:

Robert Kraus, Esq.
Kraus & Hummel LLP
99A Court Street
Plymouth, MA 02360
Phone 508-747-4200
Fax 508-747-0788

Attn: Lila Austin
19 Allenwood Road
West Roxbury, MA 02132

If to Purchaser:

Crown Communities, LLC
1712 Pioneer Ave. Ste. 2117
Cheyenne, WY 82001
Phone: (207) 844-4691
Fax: alex@kodiakpm.com

With a copy to:

Ted C. Farmer, Esq.
41000 Woodward Ave. Suite 395 East
Bloomfield Hills, MI 48304-5134
Phone: (248) 433-7300
Fax: (248) 433-4363
tedfarmer@tedfarmerlaw.com

17. Time of the Essence. Time is of the essence for purposes of this Agreement.

18. Binding Effect/Governing Law. This Agreement shall bind the parties hereto, their respective heirs and assigns. Purchaser may assign its interest hereunder. This Agreement shall be governed by the laws of the State of Massachusetts.

22. Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

23. Cooperation. The Parties agree that at any time or from time to time after the execution of this Purchase Agreement and the Closing, they shall, upon request of the other, execute and deliver such further documents and do such further actions as may be reasonably requested in order to fully effect the purposes of this transaction.

24. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included at, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday (such day, a "business day"). The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Bourne, Massachusetts time.

25. Effective Date. The date this Agreement is executed by both Seller and Purchaser shall be deemed to be the Effective Date.

26. Additional Agreements. It is understood and agreed that in connection with the acquisition, Purchase shall accede to the position of the Seller with Massachusetts Department of Environmental Protection and file and all documents to replace the Seller; additionally, there is presently approximately \$360,000 in an escrow account as mandated by such department as a "replacement" fund for such on site waste water treatment facility and such amount shall be transferred to the Purchaser and both parties shall cooperate in such transfers and the obligations relating to same shall be in all respects transferred to the Purchaser upon Closing. After Closing, Seller shall have no responsibility in any respect toward the on site waste water treatment facility. Purchaser shall reimburse Seller at Closing costs that it is presently incurring associated with the five (5) renewal of the permit for such system, which shall be approximately \$10,000.

Signature page following.

EXHIBIT "A"

LEGAL DESCRIPTION

Exclusions, easements, work to be done by Purchaser and retainage by Seller [to be described in detail]

1. 5 acres on the adjacent parcel shall be retained by Seller and may be transferred to such other entity as the Seller in its sole discretion determines
2. Seller and Purchaser agree that Seller shall have an easement as noted on the attached plan subject to such filings as may be required to perfect and make "of record" such easement.
3. The test well on Lot 117 associated with MassDEP compliance for the on-site waste water treatment facility shall be removed upon 60 days written notice to Purchaser (and this obligation shall survive the Closing of this matter), which lot is not being sold hereby.



Locus Plan The Park
at Pocasset.pdf

EXHIBIT "B"

LIST OF PERSONAL PROPERTY

Park Equipment.

To be completed by Seller

Homes Maintained to be sold by Seller

Make

Serial #

Manufactured home located at 21 First Avenue.

EXHIBIT "D"

RENT ROLL

Submitted.

20. Tax returns for the Property since February 2018 any personal property tax returns.
21. Site map.
22. Monthly utility expense for each utility provided from utility provider since February 2018 and YTD 2019 (i.e. a letter from the utility verifying the monthly expense).
23. Plans and Specifications for Building & Roads.
24. Rent Delinquency reports for last 12 months.
25. Engineering report, if any.
26. Environmental report, if any in Seller's possession.
27. Recent appraisal, if any.
28. Current title policy.
29. Copy of insurance premium notice.
30. Any correspondence to or from governing agencies (city, county, state, etc.) since February 2018
31. Copies of tenant files and leases
32. List of contractors and vendors (plumber, electrician, etc.)

S:\KH Documents\Pocasset Mobile Home Park\California Buyers\Pocasset MHP PA Buyer
REDLINE 11 14 2019.docx

Philip Lombardo Esq. LLC
41 North Road, Suite 203
Bedford, MA 01730



By E-Mail and UPS Overnight

January 2, 2020

Charles W. Austin Trust
Atten: Philip Austin, Trustee
310 Barlow's Landing
Pocasset, MA 02559

And

Lila Austin
19 Allenwood Road
West Roxbury, MA 02132

Re: The Park at Pocasset

Dear Mr. Austin and Ms. Austin:

I am writing to you as attorney on behalf of the residents (the "Residents") of The Park at Pocasset Manufactured Home Community (the "Community"), through their Association, to inform you that the Residents hereby exercise of their statutory right of refusal to purchase the Community substantially upon the terms presented to them by Notice from Attorney Robert Kraus in November, 2019.

Toward that end, I enclose the following:

1. Copies of signatures of at least 51% of the residents of the Community indicating a desire to move forward with the purchase.
2. Copy of the Articles of Organization of Pocasset Park Association, Inc., an association formed by the Residents to purchase the Community.
3. Signed purchase and sale agreement substantially in accordance with the agreement sent to the Residents with your Notice. Note, we have not been provided with a word document version of the agreement and have converted the document from a pdf file – any deviation not redlined in the attached document is not intentional. Note, further, that the Residents have not

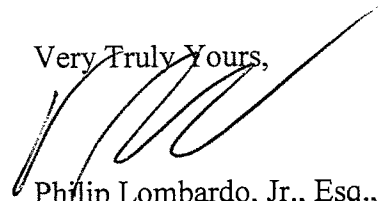
Philip Lombardo Esq. LLC
41 North Road, Suite 203
Bedford, MA 01730

been provided with the exhibits to the agreement which are of great importance – listing out property not included in the sale and personal property to be included in the sale, for example. The Residents hereby reserve their rights as to whether such an omission constitutes full compliance with the notice requirements of the applicable statute. On behalf of the Resides, I am hereby requesting a full copy of the purchase and sale agreement, including the exhibits to be attached thereto.

There are tight time frames in the agreement, such as a title search and survey. We assume that there is already in existence a title report and survey and it would be of great assistance if the seller would provide such information as it may have in order to help move this along. Likewise as to any other so-called due diligence information to which the buyer may be entitled.

Please contact me as soon as possible so that we may discuss moving forward with this matter..

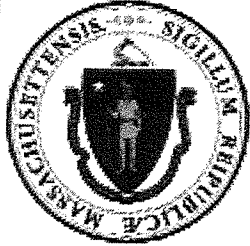
Very Truly Yours,



Philip Lombardo, Jr., Esq., Attorney for
Pocasset Park Association, Inc.

cc: Robert Kraus, Esq.

Clien



**The Commonwealth of Massachusetts
William Francis Galvin**

Minimum Fee: \$35.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Articles of Organization

(General Laws, Chapter 180)

Identification Number: 001416869

ARTICLE I

The exact name of the corporation is:

POCASSET PARK ASSOCIATION, INC.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

TO PROMOTE THE MUTUAL INTERESTS AND NEEDS OF THE MANUFACTURED HOME RESIDENTS OF THE PARK AT POCASSET IN PLAINVILLE MASSACHUSETTS WITH THE GOAL OF AN AFFORDABLE, SAFE, STABLE ENVIRONMENT IN WHICH TO LIVE AS RESIDENTS. TO HAVE THE RIGHT AND POWER TO NEGOTIATE FOR, ACQUIRE, AND OPERATE THE PARK AT POCASSET MOBILE HOME PARK LOCATED IN BOURNE, COMMONWEALTH OF MASSACHUSETTS TO PROVIDE DECENT, AFFORDABLE MANUFACTURED HOME SITES FOR RESIDENTIAL USE ON BEHALF OF THE MEMBER RESIDENTS ALL AS PROVIDED IN CHAPTER 140 OF THE MASSACHUSETTS GENERAL LAWS SECTION 32R, AS AMENDED FROM TIME TO TIME. TO PROVIDE AND MAINTAIN APPROPRIATE SERVICES, FACILITIES AND IMPROVEMENTS FOR THE BENEFIT OF ITS CURRENT AND FUTURE MEMBERS. TO EXERCISE ALL RIGHTS AND POWERS TO CARRY ON ANY BUSINESS OR OTHER ACTIVITY WHICH MAY BE LAWFULLY CARRIED ON BY A CORPORATION ORGANIZED UNDER THE BUSINESS CORPORATION LAW OF THE COMMONWEALTH OF MASSACHUSETTS, WHETHER OR NOT REFERRED TO IN THESE ARTICLES. THE PUBLIC OR QUASI-PUBLIC OBJECTIVE IS TO CONTROL RENTAL COSTS, AND PRESERVE THE AFFORDABILITY OF THE COMMUNITY FOR LOW AND MODERATE INCOME INDIVIDUALS AND FAMILIES WITHIN THE PURPOSES ALLOWED UNDER G.L. CHAPTER 180. THE CORPORATION SHALL BE A PUBLIC INTEREST NOT-FOR-PROFIT CORPORATION. THIS SHALL BE A CORPORATION WITH MEMBERS. MEMBERS IN GOOD STANDING, AS DEFINED BY THE BYLAWS, SHALL BE ELIGIBLE TO VOTE ON ANY MATTER PLACED BEFORE THE MEMBERSHIP. NOTWITHSTANDING ANY OTHER PROVISIONS OF THESE ARTICLES, THE CORPORATION SHALL NOT CONDUCT OR CARRY ON ANY ACTIVITIES NOT PERMITTED TO BE CONDUCTED OR CARRIED ON BY ANY ORGANIZATION UNDER SECTION 501 OF THE INTERNAL REVENUE CODE AND ITS REGULATIONS, AS THEY NOW EXIST OR AS THEY MAY HEREAFTER BE AMENDED.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualifications and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

NOT APPLICABLE

ARTICLE IV

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:
(If there are no provisions state "NONE")

1. THE CORPORATION SHALL HAVE PERPETUAL EXISTENCE. 2. MEMBERS MAY MAKE, AMEND, OR REPEAL THE BYLAWS OF THE CORPORATION, AS LIMITED BY LAW, UNDER PROCEDURES ESTABLISHED IN THE BYLAWS. 3. A PETITION FOR DISSOLUTION IN ACCORDANCE WITH CHAPTER 180:11A SHALL CONSTITUTE THE SOLE METHOD FOR THE VOLUNTARY DISSOLUTION OF A CHARITABLE CORPORATION AND SHALL BE AUTHORIZED BY A VOTE OF A 2/3RDS MAJORITY OF THE CORPORATION'S MEMBERS ENTITLED TO VOTE THEREON. IF THE CORPORATION HAS NO REMAINING ASSETS, THE PETITION FOR DISSOLUTION SHALL BE SUBMITTED TO THE DIVISION OF PUBLIC CHARITIES OF THE OFFICE OF THE ATTORNEY GENERAL. IF THE CORPORATION HAS REMAINING ASSETS, THE PETITION FOR DISSOLUTION SHALL BE FILED IN THE JUDICIAL COURT SETTING FORTH IN SUBSTANCE THE GROUNDS FOR THE APPLICATION FOR DISSOLUTION AND REQUESTING THE COURT TO AUTHORIZE THE FOLLOWING DISSOLUTION OF THE CORPORATION. ALL THE REMAINING ASSETS, AFTER PAYMENT OF THE CORPORATION'S DEBTS AND EXPENSES, SHALL BE DISTRIBUTED IN THE FOLLOWING MANNER: I. THE FACE VALUE, OR THE AMOUNT EQUAL TO THE MEMBERSHIP FEE PAID MINUS ANY OUTSTANDING DEBT OWED TO THE CORPORATION, WHICHEVER IS LOWER, SHALL BE RETURNED TO THE MEMBERS. II. ANY SURPLUS REMAINING AFTER THE DISTRIBUTIONS IN PARAGRAPH I SHALL BE DISTRIBUTED TO SUCH ORGANIZATIONS AS SHALL QUALIFY UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1984, AS AMENDED, OR TO ANOTHER ORGANIZATION TO BE USED IN SUCH A MANNER AS WILL BEST ACCOMPLISH THE GENERAL PURPOSES FOR WHICH THIS CORPORATION WAS FORMED. TO THE EXTENT AND IN THE MANNER PROVIDED IN THE BYLAWS, MEETINGS OF THE MEMBERS MAY BE HELD ANYWHERE IN THE COMMONWEALTH OF MASSACHUSETTS OR ELSEWHERE IN THE UNITED STATES. THE CORPORATION MAY ENTER INTO PARTNERSHIP AGREEMENTS (GENERAL OR LIMITED) AND JOINT VENTURES WITH ANY PERSON, FIRM, ASSOCIATION, OR CORPORATION ENGAGED IN CARRYING OUT ANY BUSINESS IN WHICH THE CORPORATION IS AUTHORIZED TO ENGAGE, OR IN CONNECTION WITH CARRYING OUT ALL OR ANY OF THE PURPOSES OF THE CORPORATION. PURSUANT TO M.G.L. CHAPTER 156B SECTION 13(B), M.G.L. CHAPTER 164 SECTION 6(B) AND M.G.L. CHAPTER 180 SECTION 31, THE CORPORATION HEREBY ELIMINATES THE PERSONAL LIABILITY OF THE DIRECTORS AND OFFICERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR AND/OR OFFICER, AS APPLICABLE, TO THE EXTENT PERMISSIBLE BY LAW. NO PART OF THE NET EARNINGS OF THE CORPORATION SHALL INURE TO THE BENEFIT OF ANY MEMBER, GOVERNOR, OR OFFICER OF THE CORPORATION, OR ANY PRIVATE INDIVIDUAL, OR OTHER CORPORATION, EXCEPT THAT REASONABLE COMPENSATION MAY BE PAID FOR SERVICES RENDERED TO OR FOR THE CORPORATION AFFECTING ONE OR MORE OF ITS PURPOSES. NON-DISCRIMINATION: MEMBERSHIP IN THE ASSOCIATION SHALL BE LIMITED TO HOUSEHOLDS, WHICH ARE RESIDENTS OF THE PARK AT POCASSET. MEMBERSHIP SHALL BE AVAILABLE WITHOUT DISCRIMINATION BECAUSE OF THAT PERSON'S SEXUAL ORIENTATION, AGE, SEX, RACE, CREED, COLOR, MARITAL STATUS, FAMILIAL STATUS, PHYSICAL OR MENTAL DISABILITY, OR NATIONAL ORIGIN.

Notes: The preceding four (4) articles are considered to be permanent and may only be changed by filing appropriate Articles of Amendment.

ARTICLE V

The by-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding, financial or recording officers, whose names are set out on the following page, have been duly elected.

ARTICLE VI

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

ARTICLE VII

The information contained in Article VII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation in Massachusetts is:

No. and Street: 11 3RD AVENUE
City or Town: POCASSET State: MA Zip: 02559 Country: USA

b. The name, residential street address and post office address of each director and officer of the corporation is as follows:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	JUSTINE SHOREY	4 3RD AVENUE POCASSET, MA 02559 USA 4 3RD AVENUE POCASSET, MA 02559 USA	2020
TREASURER	ALBERT MACDONALD	11 3RD AVENUE POCASSET, MA 02559 USA 11 3RD AVENUE POCASSET, MA 02559 USA	2020
CLERK	WILLIAM LYTLE	9 2ND AVENUE POCASSET, MA 02559 USA 9 2ND AVENUE POCASSET, MA 02559 USA	2020
VICE PRESIDENT	ROBIN HARRIS	3 FIFTH STREET POCASSET, MA 02559 USA 3 FIFTH STREET POCASSET, MA 02559 USA	2020
DIRECTOR	JAMES MCSHARRY	11 FOURTH AVE POCASSET, MA 02559 USA 11 FOURTH AVE POCASSET, MA 02559 USA	2020
DIRECTOR	RICHARD JENKINS	7 5TH STREET POCASSET, MA 02559 USA 7 5TH STREET POCASSET, MA 02559 USA	2020

c. The fiscal year (i.e., tax year) of the business entity shall end on the last day of the month of:
March

d. The name and business address of the resident agent, if any, of the business entity is:

Name: ALBERT MACDONALD
No. and Street: 11 3RD AVENUE
City or Town: POCASSET State: MA Zip: 02559 Country: USA

I/We, the below signed incorporator(s), do hereby certify under the pains and penalties of perjury that I/we have not been convicted of any crimes relating to alcohol or gaming within the past ten years.
I/We do hereby further certify that to the best of my/our knowledge the above-named officers have not

been similarly convicted. If so convicted, explain:

N/A

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address (es) beneath each signature do hereby associate with the intention of forming this business entity under the provisions of General Law, Chapter 180 and do hereby sign these Articles of Organization as incorporator(s) this 23 Day of December, 2019. (If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)

ALBERT MACDONALD WILLIAM LYTTLE RICHARD JENKINS JUSTINE SHOREY ROBIN HARRIS
JAMES MCSHARRY

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**PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS
GENERAL LAWS CHAPTER 140 SECTION 32R**

We, the undersigned Residents, being at least 51% of the residents of The Park at Pocasset in Bourne, Massachusetts Hereby Express Our Intent to Exercise and Do Hereby invoke our right of first refusal under Massachusetts law to purchase said Park. We therefore authorize the Cooperative Development Institute

and/or the Board of Directors and/ or officers of Pocasset Park Association, Inc. (a residents association formed to act on behalf of the Residents) to request, on our behalf, all pertinent information regarding said sale offer, and submit and complete, on our behalf an offer and/or purchase and sale agreement with the current owner to purchase the Park on substantially equivalent terms and conditions as contained in the offer by the third party buyer of the Park (with such derogations therefrom as they may deem appropriate), subject to financing as contained in MGL s. 140, s.32R. The Board shall be authorized to apply for financing and take all other actions necessary in connection with the purchase of the park and may delegate some or all of said actions to one or more officers of the corporation.

#	Name	Address in Community
1	<i>[Signature]</i>	3 FIFTH STREET
2	Jayne Gardner	# 4 Fourth St.
3	<i>[Signature]</i>	5 Second St
4	<i>[Signature]</i>	1 Sixth Ave.
5	Richard Soroni	15 Sixth Ave
6	Noreen E. Conway	5 Second Ave
7	Gayle Daniel	19 First Ave
8	<i>[Signature]</i>	3 4th St.
9	Steven Marconi	11 First Ave.
10	<i>[Signature]</i>	3 First Ave.
11	Teresa Medeiros	9 SIXTH AVE
12	<i>[Signature]</i>	4 3rd Ave
13	<i>[Signature]</i>	6 5th Ave.
14	Melinda Coraci	3 fourth avenue
15	<i>[Signature]</i>	5 FOURTH AVE.
16	<i>[Signature]</i>	
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**PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS
GENERAL LAWS CHAPTER 140 SECTION 32R**

4

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#	Name	Address in Community
1	Rosalie MacInnes	7 First St Pocasset
2	Charles Peller	3 First St.
3	Raymond Oliver	3, First St
4	John L. Stettin	8 12th Fifth Ave Pocasset
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PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS
GENERAL LAWS CHAPTER 140 SECTION 32R

13

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#	Name	Address in Community
1	<i>Mary Bullock</i>	2 ^{3rd} Ave Mary Bullock
2	EILEEN BRAGG	5 FIRST STREET
3	DANIEL KELLY	12 Second Ave
4	Justine Shorey	4 3rd Ave
5	Nicole Pritchard	16 2 nd Ave
6	William Little	9 2nd Ave
7	Renneth Marconi	5 3 rd Ave
8	PAUL + JANE MANNA	#2 5TH AVE
9	Richard GISS	2 4th Ave.
10	LYNN WETHERBEE	16 5th Ave
11	RICHARD JENKINS	7 5th Street
12	ALBERT MACDONALD	11 3rd Ave
13	Melinda Nickerson	#1 4th Ave.
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PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 140 SECTION 32R

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#	Name	Address in Community
1	James M. White	14 3rd Ave
2	GREG REIF	15 3RD AVE
3	JOE LAPERLE	7 THIRD AVE
4	<i>[Signature]</i>	36 AVE
5	Janell Hope	7 2ND AVE
6	Deek Creman	8 2ND AVE
7	Barbara Dwyer	9 1 st St
8	<i>[Signature]</i>	10 FIRST ST.
9	Jackie Moore	1 2nd St.
10	Judy Martin	10 Second Street
11	Doc Gault	14 4 2nd Ave
12	<i>[Signature]</i>	12 Second St
13	Aileen Goffette	12 First St.
14	<i>[Signature]</i>	18 4th Ave
15	James M. Gault	11 4th ave.
16	Regina Kay Miller McNamee	12 fourth St Pocasset
17	Ron Taranto	16 4TH AVE

**PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS
GENERAL LAWS CHAPTER 140 SECTION 32R**

10

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#	Name	Address in Community
1	Cynthia M. Amore	20 Fifth Ave Pocasset MA 02559
2	Randy Zipe	7 Second Ave Pocasset MA 02559
3	James M Powell	12 Fourth Street Pocasset MA 02559
4	Cynthia Watson ^{Pick} Damon	7 Third St Pocasset, MA 02559
5	Leslie 2 Ry	2 First Ave
6	Rosalie McDonald	20 4th Ave
7	Ray MacIner	7 First St.
8	Rhonda Bernard	11 6th Ave
9	William Silvers	15 3rd Ave
10	Doreen Foley	5th Ave mobile home #12
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**PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER MASSACHUSETTS
GENERAL LAWS CHAPTER 140 SECTION 32R**

2

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#	Name	Address in Community
1	<i>Cheryl P. Gaud</i>	<i>2 Second Street Pocasset. MA 02559</i>
2	<i>James Seaton</i>	<i>9 Fourth Ave. Pocasset. MA 02559</i>
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PURCHASE AGREEMENT FOR THE PARK AT POCASSET

THIS PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of the Effective Date (hereinafter defined) by and between **Pocasset Park Association, Inc., a Massachusetts nonprofit corporation** ("Purchaser" or "Buyer") and the Charles W. Austin Trust, a Massachusetts trust ("Seller").

RECITALS:

A. Seller is the owner of a manufactured home commonly known as Pocasset Mobile Home Park located at 141 Barlow's Landing Road, Bourne, MA 02539, Parcel #39.0-065.0C, and adjacent land to the south Parcel #44.0-014.00 (except as provided herein, and with such exclusions and requirements such adjacent land is referred to herein as the "Adjacent Parcel", all more particularly described in Exhibit a" (legal descriptions to be supplied by Seller and made a part hereof (collectively the Park At Pocasset and Adjacent Parcel are jointly referred to as the "Real Estate");

B. Seller is retaining approximately five (5) acres of the Adjacent Parcel as described more fully on said Exhibit A; Seller shall provide to Purchaser, subject to this Agreement, an easement over the Seller-retained five (5) acres of Lot 149 and Lot 3 (the "Easement"), and Buyer shall remove the test well from Lot 117 with 60 day's notice from the Seller to Purchaser (even after Closing)¹. This obligation shall survive the closing of this transaction and the execution and delivery of the documents herein provided in connection with this transaction. Purchaser shall provide to Seller in a form acceptable to it, an easement and frontage on 5th Street for Lot 117; and

C. Seller desires to sell and Purchaser desires to purchase the Real Estate and mobile home park (the "Transaction"), in accordance with and subject to the terms and conditions hereinafter set forth, and subject to Massachusetts laws and regulations, including but without limit, the right of first refusal accorded to residents of manufactured housing communities under MGL ch. 140, Section 32R.

CONSIDERATION AND AGREEMENT:

IN CONSIDERATION of the mutual covenants and agreements herein contained and of the benefits to be derived, receipt whereof is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. **Offer.** Purchaser hereby offers and agrees to purchase the Real Estate (subject to the exclusions noted above and herein as more particularly described on Exhibit A attached hereto), together all improvements and appurtenances, easements,

¹ It is understood and acknowledged that per MassDEP, three (3) test wells are necessary in order to comply with Massachusetts laws and regulations; only one current test well, on Lot 17, is not on the property being hereby transferred and if the MassDEP continues to require 3 test wells, Purchase will work diligently with MassDEP to find an alternative location for such test well on the property being purchased hereby.

leasehold interests, and all personally owned by Seller and used in connection therewith, including, without limitation, those items described on the personal property list attached hereto by Seller as Exhibit "B". Included in this sale are, to the extent presently owned by Seller and located within the confines of the Real Estate, all plumbing, lighting, and heating systems, mailboxes, pumps, cleaning and other supplies, machines and all licenses and permits, web site and domain names if any, all tenant files, and any other property to be agreed upon in writing. Also included in this sale is all right, title and interest of Seller, if any, in any street, road or avenue, open or proposed, in front of or adjoining the Real Estate, or any part thereof together with all right, title and interest of the Seller in or to the use of any easements or rights-of-way abutting or adjoining the Real Estate, all air, mineral, all development rights and riparian rights, to the extent owned by Seller, all tenements, hereditaments, privileges and appurtenances thereto belonging or in any way appertaining thereto, Seller or affiliate-owned mobile homes on the Real Estate and any homes installment contracts there, licenses and permits, Seller's rights and interest as lessor in all leases/tenancies, rental agreements, licenses *or* other permission to occupy, all rental security deposits, and other monetary items payable by tenants or occupants of the manufactured home community, Seller's rights in the name or trade name Pocasset Mobile Home Park, and all intangible property used in connection with the foregoing. It is acknowledged and understood that the Seller, which it maintains the right to sell same, owns the manufactured home located at 21 First Avenue. The foregoing is sometimes collectively hereinafter referred to as the "Subject Premises".

2. Acceptance. Seller hereby accepts the offer of the Purchaser. Such offer and acceptance are subject to and in accordance with the terms and conditions hereinafter set forth.

3. Purchase Price. The Purchase Price for the Subject Premises shall be Three Million Eight Hundred Thousand and 00/100 (\$3,800,000) Dollars, payable as follows:

A. Deposit Within seven (7) business days following the Effective Date, Purchaser shall deposit in escrow with a mutually acceptable title company ("Escrow Agent" or "Title Company"), an earnest money deposit ("Deposit") in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars, which sum including any interest earned thereon shall be returned to Purchaser, forfeited to Seller or applied against the purchase price in accordance with the terms of this Agreement.

B. The Deposit shall be held in an escrow account and any interest on the Deposit shall be credited to Purchaser at Closing, should Closing occur, and be credited to Seller should Closing not occur and the Deposit is not refunded to Purchaser. The term "Deposit" shall be deemed to include such interest.

C. Balance. The balance of the Purchase Price shall be paid, plus or minus closing adjustments, as the case may be, less the Deposit, in wire transferred funds to the Title Company, for disbursement to Seller at Closing in exchange for a

Quitclaim Deed conveying fee simple title to Purchaser, free and clear of liens or encumbrances save: (i) the lien of real estate taxes which are not yet due and payable; (ii) zoning ordinances and other applicable statutes, ordinances, rules and regulations pertaining to the operation of the Subject Premises; and (iii) such other encumbrances which are disclosed in the Title Commitment and Survey and which are accepted by Purchaser pursuant to Section 4.C hereof (collectively "Permitted Encumbrances"). Any existing mortgages and other liens shall be discharged at Closing, with Seller being responsible for any prepayment penalties thereon.

4. Evidence of Title and Survey.

A. As evidence of Title, within ten (10) days after Seller's Execution and delivery of this Agreement, the Title Company will supply a Title Commitment for an ALTA fee owner's policy of title insurance (the "Title Commitment") without standard exceptions and with GAP coverage thorough date of recordation naming Purchaser or its assigns as the insured, in the amount of the Purchase Price for the Subject Premises, along with copies of documents affecting title. The Title Company shall agree to insure the title in the condition required hereunder as fee simple title. The Title Company shall, at the time of Closing, deliver a "marked-up" policy of Title Insurance pursuant to the Title Commitment. The cost of the searches, Title Commitment and Title Insurance Policy shall be paid for by Purchaser.

(i) Within twenty-one (21) days of the Effective Date, unless provided by Seller to the extent that such document exists, Seller and Purchaser shall share equally the cost and expenses incurred to obtain any required updates and/or re-certifications to any survey, including a new Survey, except that Seller shall be responsible for survey costs and any other costs associated with establishing all new easements and parcel splits.

B. Purchaser shall have fifteen (15) calendar days following the receipt of the last of the title commitment, copies of documents affecting title and Survey to make objection to the title or Survey ("Title Objection Period"). If Purchaser does not raise any title objections within the Title Objection Period, both the title and survey shall be deemed approved and accepted by Purchaser. If such objection(s) to the title or survey is/are made, based upon a written opinion of Purchaser's attorney, which must be received by Seller no later than 5:00 p.m. on the date that is fifteen (15) days following the Title Objection Period, indicating that title or survey is/are not in the condition required for performance hereunder, Seller shall have up to thirty (30) days from the date notified in writing of the particular defects claimed, either to (1) remedy the title, and obtain title insurance as required above, or (2) inform Purchaser of its intention to not remedy the title ("Cure Notice Period").

(i) If the Seller remedies the survey and/or title or shall obtain such title insurance prior to the expiration of the Cure Notice Period, the Purchaser agrees to complete the sale within fifteen (15) days of written notification thereof, but no sooner than the Closing Date hereinafter specified.

(ii) If the Seller is unable or unwilling to remedy some or all of the survey or title objections to the satisfaction of Purchaser or to obtain title insurance within the Cure Notice Period and Seller notifies Purchaser in writing of same ("Refusal Notice"), then Purchaser must notify Seller in writing of its election to terminate this Agreement upon delivering written notice to Seller that, must be received by Seller within ten (10) business days, following the Refusal Notice or Purchaser's objections will be deemed waived. In the event Purchaser waives or is deemed to have waived some or all of its survey or title objection(s), those exceptions so waived shall be "Permitted Encumbrances"; to the condition of the title conveyed by Seller to Purchaser at Closing and Purchaser agrees to complete the sale within fifteen (15) days of written notification thereof, but no sooner than the Closing Date hereinafter specified.

5. Possession. Exclusive possession of the Subject Premises shall be delivered at the time of Closing, subject only to the rights of tenants, as tenants only, as per the rent roll to be attached hereto by Seller as Exhibit D (the "Rent Roll") (to be updated and certified to by Seller from time to time and at Closing), all of which tenants hold under written leases for the terms identified on the Rent Roll, or on a month to month basis, at the rentals set forth on said Rent Roll, and any prepayments or deposits made by such tenants shall be fully set forth thereon. At the time of Closing, original tenants' leases/tenancies shall be delivered to Purchaser and assignments of said leases, and security deposits, shall be executed in such form and content as is mutually acceptable to Purchaser and Seller.

6. Representations and Warranties. Seller represents and warrants unto Purchaser, as of the date hereof and which Seller shall recertify to as of the date of Closing as follows:

A. The person executing this Agreement for Seller has the full power and authority to execute this Agreement and to bind Seller hereby.

B. To the best of Seller's knowledge, information and belief, the legal description set forth on Exhibit "A" attached hereto is an accurate description of the Subject Premises, which includes the manufactured home community operation of Seller and adjacent land located on the Real Estate parcels. To the best of Seller's knowledge, information and belief, there are no unrecorded easements affecting the Subject Premises.

C. The Rent Roll to be attached hereto by Seller as Exhibit "O" is true, correct and genuine in all material respects². Except as disclosed in the Rent Roll, there are no rental concessions or side agreements with any tenants and no tenants have paid rental more than 30 days in advance. Seller has complied with all of its obligations under the occupancy agreements and there are no outstanding defaults by any tenant or Seller under any of the occupancy agreements, except as may be

² It is understood and acknowledged that the Park was under a Receivership until February 2018 and to the extent that information is provided, it is based on information from that date forward relating to the rent rolls within the Park.

disclosed on the Rent Roll. There has been no known organized "rent strike" or other tenant organized protest of rents or conditions at the Subject Premises.

D. From the Effective Date until the Closing Date, Seller shall operate, repair and maintain the Subject Premises in the same manner as the same have heretofore been maintained and shall permit no wasting of the Subject Premises. Seller shall have the right to enter into occupancy or written rental arrangements (in the ordinary course of Seller's business). Seller shall not receive more than one-month's prepaid rent and security deposit under such leases or rental agreements. Seller shall not transfer any of the Subject Premises, create any lien or encumbrance thereon, grant any easements or rights of way, or enter into any new contract which is not cancelable on and as of the Closing Date, except in the ordinary course of business or in connection with financing the Park in an amount of no more than 40% of the Purchase Price, which encumbrance shall be paid in full at Closing..

E. Seller's financial information to be provided to Purchaser under Section 7.C hereof, together with all other of Seller's books and records provided or to be provided to Purchaser are or will be true, correct and genuine in all material respects and fairly reflect the financial condition of the Subject Premises and Exhibit "C," to be attached hereto by Seller, contains a list of all service contracts affecting the Subject Premises to which Purchaser must assume; provided, however, that such information is subject to the acknowledgment that such information dates from February 2018 when the Receivership terminated.

F. Seller is not a "foreign person" as defined in §1445(f) (3) of the Internal Revenue Code and regulations promulgated thereunder, which Seller shall so certify at Closing.

G. All licenses and permits required by the Commonwealth of Massachusetts, Barnstable County and Bourne and necessary to operate the Subject Premises as a manufactured home community have been obtained, are valid and are in full force and effect and will be assigned, to the extent allowed by law, to Purchaser at Closing.

H. Based on the report of CHA Companies, Inc., dated August 28, 2018 (provided to Purchaser), to the best of Seller's knowledge information and belief, there are no defects in the water distribution system or sewage system of the Subject Premises, the water supplied to the Subject Premises is supplied by Bourne and is sufficient to meet the needs of the tenants of the Subject Premises, and meets all minimum health standards imposed by an governmental agencies having jurisdiction. The water system and all mechanical systems serving the Subject Premises are, to the best of Seller's knowledge, in sound operating condition, free from hidden or latent defects, and are adequate in size and performance to properly serve the needs of the existing mobile home park.

I. The Seller will deliver to Purchaser or Purchaser's representatives a copy of any Environmental Site Assessments, water studies or other environmental reports for the Subject Premises that are in Seller's possession. In none exist or those that exist are insufficient for the Purchaser's purposes, then Purchaser shall pay the costs and expenses of such environmental inspections.

J. All of Seller's representations, warranties and agreements contained herein shall be true and correct as of the date hereof and on the date of Closing, which Seller shall certify to at Closing and Seller shall not have, on the date of Closing, failed to meet, complied with or performed, any material condition or agreement on its part to be performed under the terms and conditions of this Agreement resulting in a default under this Agreement and there shall be no material adverse change to the Subject Premises. In the event that any one or more of the warranties and representations are materially untrue as of the Closing Date, the Purchaser, at its option, may (i) treat such breach as a default and may terminate this Agreement, and shall be entitled to recover from Seller its Deposit and be relieved of all liabilities and obligations hereunder; or (ii) waive the breach and proceed to Closing in accordance with the terms hereof.

The Purchaser acknowledges that, except as otherwise provided in this Agreement, Purchaser is acquiring the Subject Premises in it's "AS IS," "WHERE IS" condition, without any other representation or warranty or any kind or nature.

7. Conditions Precedent. The obligation of Purchaser to proceed on this Offer, if accepted, shall be conditioned upon each of the following conditions precedent:

A. Approval of the title and survey conditions of Section 4 hereof.

B. ~~Within 14 days of execution of this Agreement, Seller shall send the required notice of a pending sale to each resident and to other applicable entities as required by Massachusetts General Law Part I Title XX Chapter 140 Section 32R, and shall provide proof. Purchaser represents that it intends to continue operating the mobile home park after Closing, so there is no intended change of use or discontinuance. Beginning on the date that is 45 days after the date on the last sent of Seller's statutorily required notices herein,~~ Purchaser and its agents shall have seventy five (75) days from the date the Seller signs and delivers to Purchaser this Agreement (the "inspection Period") to review and to inspect or cause to be inspected all aspects of the physical and economic condition of the Subject Premises, and all documents relevant to the Subject Premises, access to which shall be freely granted to Purchaser and/or Purchaser's agents and representatives, at all reasonable times.

Purchaser may extend the Inspection Period based on a good faith need for more time to complete a third-party report, but it no event more than an additional 30 days, if the Purchaser increases the amount of the Deposit here in by \$25,000. Purchaser shall provide evidence of submission of financing applications and share with Seller prior to grant of any such extension. If Purchaser is not satisfied in its sole and exclusive discretion with the results of such inspections for any reason whatsoever during the Inspection Period, Purchaser may rescind this Transaction by transmitting

notice thereof via facsimile delivery or mail by the last day of the Inspection Period, and Purchaser shall then receive a refund of its Deposit and be relieved of any and all liability hereunder except as to Purchaser's indemnity obligations under this Section 7.B. Purchaser shall have no obligation to notify Seller of any reason for such rescission. In the event any portion of the Subject Premises is disturbed or altered by virtue of Purchaser's investigations, Purchaser shall promptly, at its sole cost and expense, restore the Subject Premises to substantially the same condition that existed prior to such disturbance or alteration and Purchaser shall return to Seller any information concerning the Subject Premises obtained from Seller. Purchaser shall indemnify and hold harmless Seller from and against any and all claims, liabilities, suits, causes of action, obligations, damages, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from the inspection activities of Purchaser or its agents, employees or contractors, including any construction liens filed by any of Purchaser's contractors, subcontractors or suppliers in connection with any such inspection activities.

C. Within twenty (20) business days after the Effective Date, Seller shall furnish Purchaser with copies of all items referenced on Exhibit "E" attached hereto, that have not heretofore been supplied and which Seller has in its possession.

8. Closing. Purchaser and Seller shall close this transaction on a mutually agreeable date, within 30 days of the expiration of the ~~Inspection—Mortgage Commitment~~ Period (defined in Section 27 below). The Closing shall take place through escrow with the Title Company. At Closing, the parties shall execute such documentation as may be necessary to complete this Transaction, in such form and content as is reasonably satisfactory to Purchaser and Seller including but not limited to providing the following documents to one another:

(A) Seller shall execute and deliver to the Title Company a recordable quitclaim deed (one typically used in Massachusetts) conveying fee simple title to the Subject Premises, subject only to the Permitted Exceptions;

(B) Seller shall deliver to Purchaser an Assignment of Seller's interest in contracts,

(C) Seller shall deliver to Purchaser the original tenant occupancy agreements, contracts and documents in Seller's possession, if any,

(D) Seller shall deliver to Purchaser an Assignment of Seller's Interest as Lessor in and to the Tenant Leases/Tenancies,

(E) Seller shall deliver to Purchaser possession of the Subject Premises,

(G) Seller shall provide a title insurance policy for the Subject Premises in an amount of the Purchase Price,

(H) Seller shall deliver to Purchaser such evidence of the authority and capacity of Seller and its representatives as the Title Company may require,

(I) Seller shall deliver to the Title Company an affidavit stating that, except as disclosed in the Title Commitment, there have not been improvements to the Subject Premises in the ninety (90) days immediately preceding the Closing Date or such time period as may otherwise be required pursuant to local law for the removal of any exception from insurance coverage under the Title Commitment pertaining to mechanic's or construction liens, or stating that all contractors for any such improvements have been paid,

(J) Seller shall execute and deliver to Purchaser, an affidavit verifying that Seller is not a "foreign person" as defined under § 1445 of the Internal Revenue Code,

(K) Purchaser and Seller shall execute a Bill of Sale for the Personal Property, if any, on the Subject Premises along with any applicable warranties,

(L) Seller shall deliver to Purchaser the original permits (or copies thereof if the originals are not available), to the extent that such documents exist, for the Subject Premises,

(M) Seller shall execute and deliver to Purchaser an Assignment of the right to use the trade/assumed names "Pocasset Mobile Home Park", "The Park at Pocasset" along with any necessary documents to discontinue its use with the Commonwealth of Massachusetts and other applicable governmental entities,

(N) Seller shall deliver to the Purchaser the original titles to such personal property that is titled as identified on Exhibit B attached hereto, together with all documents necessary to transfer such titles to Purchaser free and clear of all liens and encumbrances,

~~(O) Seller shall deliver an affidavit of compliance with Massachusetts General Law Part I Title XX Chapter 140 Section 32RNA,~~

(P) Purchaser shall deliver and/or execute and deliver any and all documents necessary to perfect the easement(s) as shown on plans attached, and an agreement that the test well on Lot 117 shall be removed with 60 days prior written notice to Purchaser from Seller, and such agreements and easement shall be in form and substance acceptable to Seller and in recordable form, and the parties hereto shall execute and deliver any and all other documents necessary to transfer Seller's obligations relating to the waste-water treatment facility from Seller to Purchaser.

(Q) Purchaser and Seller agree to execute such other documents, instruments, certificates or agreements, which may be reasonably necessary to consummate the transaction contemplated by this Agreement.

9. Closing Adjustments. The following shall be apportioned on the Closing Statement against sums due Seller at Closing:

A. All taxes and special assessment installments of whatever nature and kind that have become a lien on the land or are due and payable as of the date of Closing shall be paid and discharged by Seller. Current real and personal property taxes shall be prorated on the due date basis of the taxing authority on the basis of a 365 day year; Seller shall be responsible for taxes up to but not including the day of Closing. Seller shall pay all State and County and local transfer taxes and revenue stamps due upon Closing or required to be paid upon recording of the Warranty Deed or with respect to the conveyance or title transfer of any vehicles or equipment included in this Transaction.

B. All prepayment of rent, tenant security deposits, and other deposits of whatever nature and kind whatsoever shall be prorated and credited to Purchaser and adjusted as of the date of Closing based upon the actual number of days in the month of Closing, with Purchaser being credited for rents on the day of Closing. All other contractual payments such as cable service exclusive agreements, revenue share, or similar agreements shall be prorated over the term. In no event shall Purchaser be charged with any past due rentals, which if collected by Purchaser shall be remitted to Seller after all current rents and other charges have been satisfied, and less Purchaser's reasonable costs of collection, including attorneys' fees. Notwithstanding anything herein to the contrary, Purchaser is assuming no responsibility whatsoever for the collections of such past due rentals. Seller shall have no surviving rights after Closing to collect past due rentals from existing tenants. Seller may continue any collection actions, for Seller's benefit, against former tenants. If any tenant lease provides for the rent payable by the tenant after the Closing Date to be less than the pro forma or budgeted rent for such home site, as set forth on the Rent Roll for the Subject Premises as of the date of Closing, whether as a result of free rent, reduced rent or any other form of rent concessions (in each case, a "Rent Concession"), then, at Closing, Purchaser shall be entitled to a credit from the Seller in an amount equal to the sum of all such Rent Concessions made to tenants attributable to the period after the Closing Date. In the event that Purchaser acquires the Park during the midst of a summary process eviction commenced by the Seller, then Purchaser shall reimburse Seller up to \$500 for any fees, costs and legal fees incurred to that point, as an adjustment to the Purchase Price, and thereafter determine its course of conduct with respect to such action. No reduction of rent shall be adjusted if the Seller has commenced actions to recoup rents prior to the Closing on this transaction.

C. Seller shall pay all outstanding and current amounts owed to utility companies and service providers through the date of Closing. To the extent that the amounts of any charges and expenses are unavailable on the closing date, an adjustment of these items will be made thirty (30) days after closing. This Agreement shall include an obligation of all parties to cooperate in pre-closing and post-closing to provide any and all documents or other information in conformance with the obligations herein created and/or intended to be created

10. No Assumption of Liabilities. Except as to the contracts which are identified on Exhibit "C" and which Purchaser must assume, such as any agreement with a cable service regarding provision of cable to the Subject Premises, Purchaser shall not assume or accept liability for, and Seller shall remain liable for and shall discharge when due, and indemnify, defend and hold Purchaser free and harmless of and from, all debts, expenses, liabilities, obligations, contracts, commitments and claims against Seller with respect to the Subject Premises arising prior to Closing.

11. Destruction or Damage. Until the day of closing and actual exchange of legal title for the consideration to be paid hereunder, all risk of loss with respect to the Subject Premises shall be borne by Seller. In the event of destruction or damage to the Subject Premises prior to the date of Closing, Purchaser shall, at its option, have the right to (a) take the proceeds of the insurance, requiring Seller to pay the deductible amounts and proceed and go forward with the Transaction with no adjustment to the Purchase Price to be paid by Purchaser to Seller; or (b) declare the Transaction to be void and of no further force or effect and each party shall be relieved of any and all liability hereunder and Purchaser shall receive back its earnest money deposit.

12. Condemnation. In the event that notice of any action, suit or proceeding shall be given prior to the Closing Date for the purpose of condemning any part of the Subject Premises, then Purchaser shall have the right to terminate its obligations hereunder within fifteen (15) days after receiving notice of such condemnation proceeding, and upon such termination, the Agreement shall terminate with Purchaser receiving back the Deposit and the proceeds resulting from such condemnation shall be paid to Seller and in such event, Purchaser and Seller shall have no further obligations or liabilities to each other. In the event Purchaser shall not elect to terminate its obligations hereunder, the proceeds of such condemnation shall be assigned and belong to Purchaser with no adjustment whatsoever to the Purchase Price to be paid by Purchaser to Seller.

13. Duration of Offer; Expiration. This Offer may be revoked by Purchaser at any time prior to acceptance hereof by Seller. However, if this Purchase Agreement is not executed by both parties on or before November 18, 2016, 5:00 p.m. ET, then this proposed Purchase Agreement shall be considered null and void and of no force and effect, and neither party shall be liable to the other as a result thereof.

14. Deposit as Liquidated Damages. The Deposit shall be held by Escrow Agent and applied against cash due at Closing when the Transaction is consummated. In the event of a default by Purchaser hereunder, Seller shall be entitled to the Deposit as liquidated damages as its sole and exclusive remedy with the exception of Purchaser's indemnity obligations under Section 7.B hereof. In the event of a default by Seller hereunder, Purchaser shall be entitled to a return of the Deposit or may seek specific performance.

15. Broker is Commissions. Purchaser agrees to pay upon the Closing any commission that it owes to Josh Fuhrman, the real estate agent it has contracted with. Aside from that agent, neither party has dealt with or is aware of any other real estate Brokers who would be entitled to a commission with regard to this transaction, and each party indemnifies the other against any such claim.

16. Notices. *Unless specifically modified by the terms of another section of this Agreement,* any notices, demands or requests required or permitted to be given hereunder must be in writing and shall be deemed to be given (i) when hand delivered, or (ii) one (1) business day after delivery to Fed Ex or similar overnight service for next business day delivery, or (iii) three (3) business days after deposit in the U.S. mail first class postage prepaid, or (iv) when sent by facsimile or telecopier transmission, if such transmission is immediately followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows:

If to Seller:

Charles W. Austin Trust
Attention : Philip Austin, Trustee
310 Barlow's Landing Road

Pocasset, MA 02559
Phone:

Fax:
email:

With a copy to:

Robert Kraus, Esq.
Kraus & Hummel LLP
99A Court Street
Plymouth, MA 02360
Phone 508-747-4200
Fax 508-747-0788

Attn: Ula Austin
19 Allenwood Road
West Roxbury, MA 02132

If to Purchaser:

Pocasset Park Association,
Inc.
Justine Shorey, President
4 3rd Avenue
Pocasset, MA 02559

With a copy to:

Philip Lombardo, Esq.
41 North Road, Suite 203
Bedford, MA 01730
Phone: 781-538-6894
Fax: 781-538-6831

17. Time of the Essence. Time is of the essence for purposes of this Agreement.

18. Binding Effect/Governing Law. This Agreement shall bind the parties hereto, their respective heirs and assigns. Purchaser may assign its interest hereunder. The laws of the State of Massachusetts shall govern this Agreement.

19. Exchange. In the event; prior to Closing, either Purchaser or Seller shall desire to include this transaction as a part of a tax deferred or delayed exchange, pursuant to §1031 of the Internal Revenue Code, the other party, as an accommodation, shall enter into and execute any such amendatory documentation as may be reasonably requested; provided however, that such party shall not incur any additional cost, expense, risk or potential liability whatsoever on account thereof and further provided that the same does not delay close of the transaction. The cooperating party shall have no liability to the party seeking favorable tax treatment in the event the subject transaction is found, held or adjudicated not to qualify as or as a part of a tax deferred exchange pursuant to §1031 of the Internal Revenue Code. Some or all of Seller or Purchaser's contract rights shall be assignable to enable Seller or Purchaser to effect tax planning goals, if such assignment shall in no way relieve either party of any of its obligation hereunder, or cause any liability to the other. Thus, Purchaser and Seller agree that Purchaser or Seller, as the case may be, may substitute a qualified intermediary ("Intermediary") to act in its place regarding this transaction. The Intermediary shall be designated in writing. Upon identification of Intermediary, Intermediary shall be substituted for Purchaser or Seller, as the case may be. Seller agrees to sell and/or Purchaser agrees to purchase the Subject Premises and perform all other required performance to the Intermediary and to render its performance of all its obligations to Intermediary. Seller or Purchaser, as the case may be, shall unconditionally guarantee the full and timely performance by Intermediary of each one of the representations, warranties, indemnities, obligations and undertakings of Intermediary. As guarantor, Seller or Purchaser shall be treated as a primary obligor with respect to the representations, warranties, indemnities, obligations and undertaking, and in the event of breach, Seller or Purchaser may proceed directly against the other on this guarantee without the need to join Intermediary as a party to any action. Seller or Purchaser unconditionally waives any defense that it might have as guarantor that it would not have if it had made or undertaken these representations, warranties, indemnities, obligations and undertaking directly. In the event of the breach of any representations, warranties, obligations and undertakings by either party or its Intermediary or in the event of any claim upon any indemnity of Seller or Purchaser or Intermediary (whether the representation, warranty; indemnity, obligation or undertakings is express or implied), each party's exclusive recourse shall be against the other and not the Intermediary, provided, however, that each shall be liable to the other for any breach by the Intermediary.

20. Allocation. Prior to the expiration of the Inspection Period, Purchaser and Seller shall agree in writing to a satisfactory complete allocation of the Purchase Price for tax purposes, but it should be recognized at the outset that substantially all of the Purchase Price would be allocated to so-called capital gains.

21. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed an original and all of which shall constitute the same instrument.

22. Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by a court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

23. Cooperation. The Parties agree that at any time or from time to time after the execution of this Purchase Agreement and the Closing, they shall, upon request of the other, execute and deliver such further documents and do such further actions as may be reasonably requested in order to effect the purposes of this transaction.

24. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included unless such last day is a Saturday, Sunday or legal holiday for national banks in the locality where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday (such day, a "business day"). The last day of any period described herein shall be deemed to be at 5:00 p.m. Bourne, Massachusetts time.

25. Effective Date. The date this Agreement is executed by both Seller and Purchaser shall be deemed to be the "Effective Date"

26. Additional Agreements. It is understood agreed that in connection with the acquisition, Purchase shall accede to the position of the Seller with Massachusetts Department of Environmental Protection and file and all documents to replace the Seller; additionally, there is presently approximately \$360,000 in an escrow account as mandated by such department as a "replacement" fund for such on site waste water treatment facility and such amount shall be transferred to the Purchaser and both parties shall cooperate in such transfers and the obligations relating to same shall be in all respects transferred to the Purchaser upon Closing. After Closing, Seller shall have no responsibility in any respect toward the on-site wastewater treatment facility. Purchaser shall reimburse Seller at closing costs that it is presently incurring associated with the five (5) renewal of the permit for such system, which shall be approximately \$10,000.

27. Mortgage Contingency. The Purchaser shall have 90 days following Seller's execution and delivery of this Agreement to obtain financing for the Purchase of the Property ("Mortgage Commitment Period), failing which, the Purchaser shall so notify Seller prior to the expiration of said Mortgage Commitment Period and all deposits shall be refunded to Purchaser.

Signature page following.

Date: December 30, 2019

Date: _____

Date: _____

Purchaser:

Pocasset Park Association, Inc.

By: Justin Rosey, President

Seller:

Charles W. Austin Trust

By: _____
Philip Austin, Trustee

Accepted by:

Lila Austin, Beneficiary



List of Exhibits:

- A Legal Description
- B List of Personal Property
- C Service Contracts
- D Rent Roll
- E Schedule of Property Information

**WITHDRAWAL FROM PETITION TO RESIDENTS TO INVOKE RIGHT OF
FIRST REFUSAL TO PURCHASE THE PARK AT POCASSET MHP,
BOURNE, MASSACHUSETTS**

The undersigned hereby states that I previously signed a *Petition to Residents to Invoke Right of First Refusal under Massachusetts General Laws Chapter 140 Section 32R*.

When I signed that *Petition*; I felt pressured to sign it, and I did not understand what I was signing. Here also is my own explanation of how I came to sign it:

I had said 'no' twice before but signed the third
time because I knew they had already received the
required number of signatures and knew it was
better to be a member than not to be one.

I now understand what the *Petition* is about, and I want no part of it. I do not want to participate in a tenant association effort to buy The Park at Pocasset, and I withdraw my signature from the *Petition*.

Adam J. Harris
Name Adam Harris

30 Jan 2020
Date

12 Second St
Address

**WITHDRAWAL FROM PETITION TO RESIDENTS TO INVOKE RIGHT OF
FIRST REFUSAL TO PURCHASE THE PARK AT POCASSET MHP,
BOURNE, MASSACHUSETTS**

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When I signed that *Petition*, I felt pressured to sign it, and I did not understand what I was signing. Here also is my own explanation of how I came to sign it:

I changed my mind.

I now understand what the *Petition* is about, and I want no part of it. I do not want to participate in a tenant association effort to buy The Park at Pocasset, and I withdraw my signature from the *Petition*.

Brian Strehle
Name

11/30/20
Date

65th Ave Pocasset, Ma
Address

+ JoAnn E Strehle
JoAnn E Strehle

WITHDRAWAL FROM PETITION TO RESIDENTS TO INVOKE RIGHT OF
FIRST REFUSAL TO PURCHASE THE PARK AT POCASSET MHP,
BOURNE, MASSACHUSETTS

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When I signed that *Petition*, I felt pressured to sign it, and I did not understand what I was signing. Here also is my own explanation of how I came to sign it:

*I got misinformed, I was pressured
into signing this*

I now understand what the *Petition* is about, and I want no part of it. I do not want to participate in a tenant association effort to buy The Park at Pocasset, and I withdraw my signature from the *Petition*.

Rosalee MacDonald 1/30/20
Name Date

7 First St.
Address

Charles MacDonald

**WITHDRAWAL FROM PETITION TO RESIDENTS TO INVOKE RIGHT OF
FIRST REFUSAL TO PURCHASE THE PARK AT POCASSET MHP,
BOURNE, MASSACHUSETTS**

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When I signed that *Petition*, I felt pressured to sign it, and I did not understand what I was signing. Here also is my own explanation of how I came to sign it:

*I got misinformed, I was pressured
into signing this*

I now understand what the *Petition* is about, and I want no part of it. I do not want to participate in a tenant association effort to buy The Park at Pocasset, and I withdraw my signature from the *Petition*.

Rosalie MacDonald

Name

1/30/20

Date

20 4th Ave

Address

Chuck MacDonald

**WITHDRAWAL FROM PETITION TO RESIDENTS TO INVOKE RIGHT OF
FIRST REFUSAL TO PURCHASE THE PARK AT POCASSET MHP,
BOURNE, MASSACHUSETTS**

The undersigned hereby states that I previously signed a *Petition to Residents to Invoke Right of First Refusal under Massachusetts General Laws Chapter 140 Section 32R*.

When I signed that *Petition*, I felt pressured to sign it, and I did not understand what I was signing. Here also is my own explanation of how I came to sign it:

I was not pressured to sign the petition.
I thought I was signing on to acquire
about information regarding the petition
which I now feel is not in my best interest.

I now understand what the *Petition* is about, and I want no part of it. I do not want to participate in a tenant association effort to buy The Park at Pocasset, and I withdraw my signature from the *Petition*.

Rhonda Bernard
Name

2/1/2020
Date

11 6th Ave
Address



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

March 27, 2024

By electronic filing
Office of the Clerk
Massachusetts Appeals Court
John Adams Courthouse
1 Pemberton Square, Room 1200
Boston, MA 02108

Re: *Crown Communities, LLC v. Philip Austin, et al.*, Appeals Court No. 2023-P-0580

Dear Office of the Clerk:

The Attorney General respectfully submits this letter as *amicus curiae* in the above-captioned case to address the trial court's application of the term "reasonable evidence" as it applies to manufactured housing community residents' right of first refusal to purchase their community pursuant to § 32R(c) of the Manufactured Housing Act (G. L. c. 140, §§ 32A-32S) (the "Act") and 940 CMR 3.09(3)(a) of the Attorney General's regulations (940 CMR 10.00, *et seq.*) (the "Regulations").

This case presents a question of first impression regarding the meaning of "reasonable evidence" under § 32R(c) and 940 CMR 3.09(3)(a). This letter provides the Attorney General's interpretation of "reasonable evidence" under these provisions, and explains how the trial court appears to have improperly applied a heightened standard of what constitutes "reasonable evidence," artificially raising the community residents' burden to exercise their statutory rights. The Attorney General takes no position on any of the other legal or factual issues raised in this appeal.

Interest of the Attorney General & the Importance of the Right of First Refusal

Pursuant to § 32S of the Act, the Attorney General has promulgated Regulations necessary for its "interpretation, implementation, administration and enforcement." These Regulations "must be accorded all the deference due to a statute." *Borden, Inc. v. Comm'r of Pub. Health*, 388 Mass. 707, 723 (1983). Violations of the Act and Regulations are also generally violations of the Consumer Protection Act, G. L. 93A, *see* 940 CMR 10.02, which the Attorney General is charged with enforcing. Accordingly, the Attorney General has a strong interest in ensuring the fair, accurate, and consistent application of the Act and its implementing Regulations, and her interpretation of the Regulations is "entitled to substantial deference." *Blake v. Hometown Am. Communities, Inc.*, 486 Mass. 268, 273 (2020) (citation omitted).

Manufactured housing communities provide one of the only unsubsidized affordable housing options in the Commonwealth and are home to “many elderly persons and families of low and moderate incomes.” *Layes v. RHP Properties*, 95 Mass. App. Ct. 804, 810 (2019) (quoting *Greenfield Country Estates Tenants Ass’n v. Deep*, 423 Mass. 81, 83 (1996)). However, because manufactured housing residents typically own their home but rent the land on which the home sits, see *Commonwealth v. Gustafsson*, 370 Mass. 181, 184 (1976), residents are vulnerable to losing their homes if the community owner chooses to discontinue using the land as a manufactured housing community, *Greenfield Country Estates Tenants Ass’n*, 423 Mass. at 86. The primary purpose of § 32R of the Act is to guard against these discontinuances “and to ensure that tenants of such communities are not left at the peril of their landlords due to a practical inability to relocate a manufactured housing unit.” *Id.* The residents’ statutory right of first refusal is a critical tool to realize this objective. If residents can purchase their own community, they can ensure its continued existence. See *id.*

The Meaning of “Reasonable Evidence” in § 32R(c) and 940 CMR 10.09(3)(a)

To exercise the right of first refusal, the Act requires a group of residents to present the community owner with, among other things, “reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community.” G. L. c. 140, § 32R(c). The Regulations further state that “‘reasonable evidence. . .’ shall include, without limitation, a document signed by such persons.” 940 CMR 10.09(3)(a).

The term “reasonable evidence” is not otherwise defined in the Act or the Regulations. Where a term is not defined in the statute, courts look to the plain and ordinary meaning of the word, and “derive the words’ usual and accepted meaning from sources presumably known to the statute’s enactors, such as their use in other legal contexts and dictionary definitions.” *Commonwealth v. Tinsley*, 487 Mass. 380, 386–87 (2021) (citation omitted). Indeed, it is a well-accepted principle of statutory construction that courts may “presume that the Legislature was well aware of the use of the term . . . in our statutes and the meaning attributed to that term in our decades of decisional law.” *Commonwealth v. Rezendes*, 88 Mass. App. Ct. 369, 373–74 (2015) (citation omitted).

In 1993, when the Legislature first added the term “reasonable evidence” to § 32R(c), see St.1993, c. 145, § 19, the Supreme Judicial Court had twice in the preceding decade articulated a consistent definition of “reasonable evidence,” equating it with the “substantial evidence” standard found in the Administrative Procedure Act, G. L. c. 30A, §§ 1, 14. See *Med. Malpractice Joint Underwriting Ass’n of Massachusetts v. Comm’r of Ins.*, 395 Mass. 43, 54-55 (1985); *Workers’ Compensation Rating & Inspection Bureau of Mass. v. Comm’r of Ins.*, 391 Mass. 238, 244–45 (1984). In *Med. Malpractice Joint Underwriting Ass’n of Massachusetts*, the SJC held that the “[reasonable evidence] standard is indistinguishable from the substantial evidence standard contained in G.L. c. 30A, § 1(6),” 395 Mass. at 54, which states that “[s]ubstantial evidence’ means such evidence as a reasonable mind might accept as adequate to support a conclusion.” It is a particularly low standard to meet, as it is less burdensome than a preponderance of the evidence. *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996).

Drawing from the SJC's longstanding and settled interpretation of the term, the Attorney General understands "reasonable evidence" as used in § 32R(c) and 940 CMR 10.09(a)(3) to likewise mean any such evidence as a reasonable mind might accept that residents of at least 51% of the occupied homes approve of purchasing the community.¹ In determining whether residents provided "reasonable evidence," the Regulations provide that a court should consider *any* evidence the residents provided to the community owner, including, "*without limitation*, a document signed by the residents." 940 CMR 10.09(a)(3) (emphasis added).

The use of the phrase "without limitation" makes clear that the Regulations do not envision strict requirements for residents to satisfy their obligation under the statute. The burden is intended to be low, with a list of signatures serving as only one example of evidence that residents might present. *See Fed. Nat. Mortg. Ass'n v. Nunez*, 460 Mass. 511, 519 (2011) ("...we understand the phrase 'without limitation' to mean the broadest reasonable definition of acts, without exception."); *Pyle v. Sch. Comm. of S. Hadley*, 423 Mass. 283, 286 (1996) ("without limitation" leaves "no room in the statute to construe an exception"). *See also McKissick v. Yuen*, 618 F.3d 1177, 1185 (10th Cir. 2010) (role of "including, but not limited to" clause "is to serve as an example, an illustration, a representation of what's encompassed"); *Jackson v. O'Leary*, 689 F. Supp. 846, 849 (N.D. Ill. 1988) (use of "including, but not limited to" represents "the classic language of totally unrestricted (and hence totally discretionary) standards").

The Attorney General's interpretation of "reasonable evidence" in this context is consistent with the plain language of the Act, and therefore "is entitled to substantial deference." *Blake*, 486 Mass. at 273 (citation omitted).

The Trial Court Erred by Requiring a Higher Standard Than "Reasonable Evidence"

Despite the low and flexible burden that the Act and the Regulations place on residents of manufactured housing communities, the trial court in the present case appears to have imposed a heightened standard without citing to any legal authority for doing so. In its findings of fact and rulings of law, the court noted that the residents used a form entitled "Petition of Residents to Invoke Right of First Refusal Under General Laws Chapter 140 Section 32R" to gather the signatures of residents who approved purchasing the community. R.A. III at 224. The completed form with signatures was presented to the community owner along with a letter stating that the signatures represented "at least 51% of the residents of the Community indicating a desire to move forward with the purchase." R.A. III at 225-26.

¹ One distinction between the import of "reasonable evidence" in the Act, and the corresponding "substantial evidence" standard in G. L. c. 30A, bears mention here. Unlike in the Chapter 30A context, which envisions deference to the administrative decisionmaker, *see, e.g., Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012), the community owner charged with determining whether residents have met their burden of providing "reasonable evidence" is not understood to be an impartial decisionmaker. The Act accordingly does not provide for any deference to the community owner's determination on judicial review.

Nonetheless, the trial court found that the residents had not met their burden under § 32R(c), noting that the petition and letter lacked “further verification or explanation.” R.A. III at 226. The trial court clarified its position in its order denying the residents’ motion to amend the judgment, holding that the residents had failed to give the community owner “reasonable evidence” because:

[t]he pages of the signed petition were not submitted with any verification, even so much as a brief sworn statement by its attorney, to support the bare assertion that at least 51% of the residents supported the Association’s purchase of the community.

R.A. III at 270.

In reaching this conclusion, the trial court added a burden to the § 32R(c) right of first refusal process that is not supported by law. Nothing in the plain text of the Statute or the Regulations suggests that a signed petition must be verified, attested to, or further explained in order to constitute evidence which a “reasonable mind might accept as adequate.” *Med. Malpractice Joint Underwriting Ass’n of Mass*, 395 Mass. at 55. On the contrary, 940 CMR 3.09(3)(a) provides that the universe of what may constitute “reasonable evidence” is “without limitation.” And indeed, the example given in the Regulations as something that reasonable evidence “shall include” is “a document signed by the residents”—nothing more. 940 CMR 3.09(3)(a). The trial court’s heightened burden further contradicts the Act’s purpose of preserving manufactured housing, which the Act accomplishes through, among other things, providing residents an accessible right of first refusal to purchase their community.

For all of these reasons, the Attorney General respectfully submits that, to the extent the trial court concluded that the community residents failed to meet their statutory burden by submitting a signature petition without “further verification or explanation,” the court committed an error of law.

Thank you for your consideration of this filing.

Very truly yours,



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CERTIFICATE OF COMPLIANCE

I, Mark D. Finsterwald, hereby certify that, to the best of my knowledge, this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs, including but not limited to those rules specified in Mass. R. App. P. 16(k). This brief complies with the length limit of Mass. R. App. P. 11 and 20(4): it consists of 10 pages of argument in 12-point Courier New font and does not exceed 10.5 characters per inch.

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CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that on August 25, 2025, I filed the attached Application for Direct Appellate Review with the Supreme Judicial Court and served the same on the following by email and/or the court-approved electronic file system:

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