

Manufactured Homes Commission
Minutes of Meeting Held On
July 12, 2022 at 10:30 am¹

CALL TO ORDER: 10:36 am

In Attendance: Tracy Sharkey, Ethan Mascoop, Dan Less from the AGO, Tyler Newhall from DHCD. Ms. Sharkey acted as the chair for the meeting as Commission Chair Sandra Overlock was not able to attend the meeting. Also, Commission members Kathy Zorotheos and Jeffrey Hallahan did not attend the meeting.

There was a discussion about whether Robert's Rules of Order would recognize ex-officio members in determining a quorum; Dan Less said he would check on this for the next meeting. It was generally agreed there was a quorum. Dan Less introduced Lois Martin, Paralegal at the AG's Office, who will be taking notes for him. He also introduced Assistant Attorney General Daniel Bahls from the Springfield AG's Office, who will be helping out with some manufactured housing issues in the future.

APPROVAL OF MINUTES

The approval of minutes was tabled until the next meeting.

OLD BUSINESS

Ms. Sharkey said at the last meeting she asked AAG Less for a chart of manufactured housing complaints and how they were dealt with. AAG Less said it was taking longer than he thought because of coding issues with OnBase, but he expect to be able to get the Commission this chart soon. Ms. Sharkey stated that was fine, she is just concerned that complainants might be receiving too many referral letters to an attorney. AAG Less said we could give them complaint summaries, and warned he wouldn't be able to give them information on complaints that are still active. He restated that this chart would be available soon.

¹ The meeting was held remotely pursuant to An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency (<https://www.mass.gov/service-details/updated-guidance-on-holding-meetings-pursuant-to-the-act-extending-certain-covid-19-measures>). The public could participate remotely through video or telephone.

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CORRESPONDENCE/COMMUNICATION

Tabled until the next meeting.

OLD BUSINESS

Mr. Mascoop said he has not had a chance to work on the list of parks in Massachusetts for the past three months. Ms. Sharkey asked if it was a goal to present it at then next meeting? He noted it was more difficult than initially anticipated. Ms. Sharkey noted AAG Less is also on that subcommittee. AAG Less said he was not aware of any meeting being scheduled. Mr. Mascoop said he would get things going, and report at the next meeting. AAG Less asked if he could leave this issue with Mr. Mascoop and Ms. Sharkey? They agreed that was fine.

NEW BUSINESS

Mr. Mascoop had two issues he wanted to discuss:

- 1). The Lincoln Land Institute's film on manufactured housing communities. He attended the film on May 1st, 2022 in Somerville. He also attended a discussion about the film at Harvard University on May 2nd, 2022. The movie shows the effects of developers purchasing manufactured housing communities. Mr. Mascoop liked the film and said there was a short segment, about 10 minutes, he could show the Commission if they would like to see it. He noted it concerned communities in the south and mid-west, but a community in New Hampshire was also included;
- 2). The new federal rule about energy efficiency in manufactured housing communities. He said he wanted to understand the new regulations and how they would affect manufactured housing communities.

AAG Less offered to send him a link to the new regulations. Ms. Sharkey asked if he could send everyone on the Commission a link? AAG Less said he would, and offered to answer questions. Ms. Sharkey noted this should be an issue on the next agenda. AAG Less explained to the guests on the call that these new regulations only affect new units, and they would not need to upgrade their existing units under these regulations. He also noted there are grant funds available to help new owners with these costs.

Ms. Sharkey said she had not heard of any decision on how to determine sizing for "proper loading" which she explained as BTU's. She explained units are different sizes and sometimes the sizing is wrong. She wanted to know if builders are going by the Massachusetts Builders' Code or are they exempt from that? Mr. Mascoop suggested it might be a good idea to have someone come to a meeting who can explain these regulations. Ms. Sharkey thought the answer might be easier than it appears.

Mr. Mascoop said he had heard the Revere manufactured housing community was closing or being sold? Had anyone heard about that? AAG Less said he had not heard anything about it, but he would look now to see if he had any information on this.

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OPEN FORUM

Nancy Crowley from Leisurewoods in Rockland said she was confused about paying for water. She had heard that she should not be paying for water, but she had heard that the Attorney General's Office said residents paid for water. AAG Less said he was aware of this issue at Leisurewoods and had already responded to one resident who asked about this. He explained there are two ways to pay for utilities; they can be prorated into a resident's rent, or they can be individually metered at each unit and each resident was responsible for paying their water bill to the water company. Ms. Crowley said this now made sense.

Mr. Mascoop asked Ms. Crowley when her meters were installed? She said they were there when the park opened, which everyone agreed was what the park is supposed to do. Mr. Mascoop asked AAG Less if appliances are required to be low-flow under the State Sanitary Code, as they are if the park owner sub-meters? AAG Less explained individual water metering meant the water company put in the meters and is billing the resident directly, as is happening at Leisurewoods. AAG Less suggested that what Mr. Mascoop was referring to was water sub-metering which means the park owner has installed their own meters at each unit and the owner charges individually for water based on what submeter reports. AAG Less noted there are many and strict Massachusetts statutory and regulatory requirements that any landlord must follow if they submeter to ensure accurate and fair billing for water as well as the potability of the water. He noted that the submetering statute included the use of low-flow devices. AAG Less said he was not aware of any parks currently using submetering.

Ms. Sharkey noted that page 21 of the Guide, section 8(a) states submetering is not allowed. AAG Less referred to Attorney General Regulations, 940 CMR 10.05(4)(b)(3) on page 94 of the Guide, which notes an exception when the utility is individually metered. He agreed with Ms. Sharkey that the wording can be confusing and some tweaking may be needed on the Guide, but submetering is permitted. AAG Less and Mr. Mascoop disagreed on whether manufactured homes are dwellings for the purposes of submetering. Mr. Mascoop said he agreed, but the park was responsible for providing the water. AAG Less said he would circulate a decision he had regarding this issue, *Alenci v. HTA 2020 WL2515872 (D. Mass 2020)*.

Mr. Mascoop restated residents should never lose water, even if they don't pay the utility. Ms. Sharkey noted 8(a) and 8(e) on page 21 of the Guide conflict with the information in 940 CMR 10.05. AAG Less did not disagree. He also noted shut-off is a separate issue. There are two parts to this, he said: 1). Who supplies the water? 2). Who pays for it? 8(e) is an exception if the utility is metered. AAG Less also reiterated the Guide needs clarification and updating. Mr. Mascoop asked again for a copy of that decision, and AAG Less said sure.

Gina Rossano, a resident of Leisurewoods in Rockland, said she was still confused about the water issue. Ms. Sharkey said Mr. Mascoop's concern is about shut-off of the water. As long as the individual metering is disclosed in the occupancy agreement, it's fine. She said now she understood.

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AAG Less did a quick check of his files, but could not find any information about the Revere park closing or being sold. He said he hadn't checked everything yet, and he would keep looking. Mr. Mascoop said he had just heard things and wondered. AAG Less asked Mr. Mascoop to let him know if he got more information on this. Ms. Sharkey asked him the park name? Mr. Mascoop said it was the only one in Revere, and AAG Less agreed he knew which park Mr. Mascoop was asking about.

Ms. Sharkey reminded AAG Less the rule requiring virtual meetings ends July 15th, 2022, the rule had not been renewed yet, and asked if the next meeting on October 18th, 2022 would have to be in-person? AAG Less stated he hoped if the commission could continue to have virtual meetings, but just in case he had reserved a room at the Plymouth Public Library. Tyler Newhall from DHCD noted there are 2 pending legislative actions regarding making virtual meetings a part of the Open Meeting Law. Mr. Mascoop said they would temporarily state the next meeting would be at the Plymouth Public Library, October 18, 2022. Notice will be sent out in due course.

MOTION TO ADJOURN at 11:27a.m. by: Ethan Mascoop

Seconded by: Dan Less

Discussion: None

All in favor: Unanimous

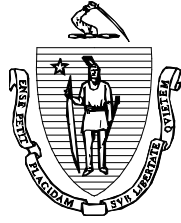
**WEBSITES AND DOCUMENTS REFERENCED DURING THE JULY 12, 2022
MANUFACTURED HOUSING COMMISSION MEETING**

Websites:

- ***Link to the New Federal Regulations for Energy Conservation Standards for Manufactured Housing*** - <https://www.federalregister.gov/documents/2022/05/31/2022-10926/energy-conservation-program-energy-conservation-standards-for-manufactured-housing>;

- ***Link To President Biden Announcement of “New Actions to Ease the Burden of Housing Costs” Which Includes Several Elements Related to Manufactured Housing.*** https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/?utm_source=substack&utm_medium=email; and

The (1) notice of the meeting, (2) the meeting’s agenda and a (3) the Federal District Court of Massachusetts’ May 15, 2020 Decision in *Alenci v. Hometown American Management* (regarding water meters in manufactured housing communities and referenced during the meeting) are attached.



Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the MANUFACTURED HOME COMMISSION

Massachusetts General Laws, Chapter 6, Section 108, establishes the Manufactured Homes Commission. It is the mission of the Manufactured Homes Commission to provide prompt, impartial service to all parties affected by or concerned with matters pertaining to manufactured housing communities, to the maximum extent permitted by law.

**PUBLIC NOTICE
COMMONWEALTH OF MASSACHUSETTS**

MANUFACTURED HOME COMMISSION QUARTERLY MEETING

**Tuesday, July 12, 2022
10:30 AM to 12:30 PM**

To attend the meeting through **video access**, please join the meeting by clicking on the following link: [Click here to join the meeting](#)

To attend the meeting through **audio access** only, please join the meeting by dialing:
1-857-327-9245
– Conference ID: 177 027 407#

This meeting is open to the public. All persons having business to be brought before the Commission are invited to participate.

Commissioners:

**Sandy Overlock, Chair
Jeffery Hallahan, Vice-Chair
Kathy Zorotheos, Secretary
Tracy Sharkey Commissioner
Ethan Mascoop, Commissioner**

Pursuant Chapter 20, of the Acts of 2021, suspending certain requirements of the Open Meeting Law through April 1, 2022, this meeting of the Manufactured Housing Commission will be conducted through remote participation as noted above to ensure that the public can adequately access the meeting in real time.



For further information contact: Chris Jee, DHCD
christopher.jee@mass.gov
617-573-1313

For reasonable accommodations regarding this meeting, please contact 617-573-1102.

Favor de comunicarse con el Departamento de Vivienda y Desarrollo de la Comunidad de Massachusetts en (617) 573-1100 (TTY (617) 573-1140) para ayuda gratis con el idioma. Entre em contato com o Departamento de Moradia e Desenvolvimento Comunitário de Massachusetts no número (617) 573-1100 (TTY (617) 573-1140) para obter assistência gratuita com o idioma.

如果您需要免費的語言翻譯幫助，請聯絡麻州住宅及社區發展部 (The Massachusetts Department of Housing and Community Development) 聯絡方式: (617) 573-1100 (TTY (617) 573-1140).

Свяжитесь с сотрудником Департамента жилищного хозяйства и общественного развития штата Массачусетс на предмет оказания бесплатной помощи по переводу на иностранный язык. ((617) 573-1100 (TTY (617) 573-1140)).

Vui lòng liên hệ Bộ Phát Triển Nhà Ở và Cộng Đồng Massachusetts tại (617) 573-1100 (TTY (617) 573-1140) để được hỗ trợ ngôn ngữ miễn phí.

Tanpri kontakte Department of Housing and Community Development [Depatman Devlopman Lojman ak Kominote] Masachousèt la nan (617) 573-1100 (TTY (617) 573-1140) pou asistans gratis nan lang.

Si prega di contattare il Dipartimento Edilizia Abitativa e Sviluppo della Comunità dello Stato del Massachusetts al (617) 573-1100 (TTY (617) 573-1140) per avere assistenza gratuita per la traduzione.

១) នេះគឺជាឯកសារសំខាន់។

សូមទំនាក់ទំនងផ្នែកអភិវឌ្ឍន៍សហគមន៍និងលំនៅដ្ឋានរបស់រដ្ឋម៉ាសាឈូសេត (Massachusetts Department of Housing and Community Development) តាមរយៈ: (617) 573-1100 (TTY (617) 573-1140) ដើម្បីទទួលបានជំនួយ ផ្នែកភាសាដោយឥតគិតថ្លៃ។

On July 7, 2022 this notice was posted at DHCD Open Meeting Notices:
<https://www.mass.gov/service-details/dhcd-open-meeting-notice>

The Commonwealth of Massachusetts

Manufactured Homes Commission

100 Cambridge Street, Suite 300

Boston, MA 02114

(617) 573-1400

Quarterly Meeting July 12, 2022

Virtual

10:30M – 12:30PM

AGENDA

- 10:30** **CALL TO ORDER**
Attendance and Introductions
- 10:35** **APPROVAL OF MINIUTES from April 2022**
- 10:40** **CORRESPONDENCE/COMMUNICATIONS**
No correspondence
- 10:45** **OLD BUSINES**
Manufactured Community list update from Ethan's group
- 12:15** **NEW BUSINES**
- 11:00** **PUBLIC FORUM**
- 12:30** **ADJOURN**

MEMBERS

Sandy Overlock, Chair

Kathy Zorotheos, Commissioner

Jeffery Hallahan, Assistant Chair

Tracy Sharkey, Commissioner

Ethan Mascoop, Commissioner

EX-OFFICIO MEMBERS

The Attorney General Office

Dan Less

Director of Housing & Community

Development: Ryan Ambrose

2020 WL 2515872

Only the Westlaw citation is currently available.
United States District Court, D. Massachusetts.

Anthony ALENCI, Plaintiff,

v.

HOMETOWN AMERICAN MANAGEMENT, LLC et al., Defendants.

Civil No. 19-12244-LTS

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Filed 05/15/2020

Attorneys and Law Firms

Adam M. Bond, Charles Basler, Law Office of Adam M. Bond, Middleborough, MA, for Plaintiff.

James C. Lester, Pro Hac Vice, Thomas W. Thagard, III, Pro Hac Vice, Lee E. Bains, Jr., Pro Hac Vice, Maynard Cooper & Gale PC, Birmingham, AL, Lisa C. Goodheart, Tristan P. Colangelo, Sugarman, Rogers, Barshak & Cohen, P.C., Boston, MA, for Defendants.

ORDER ON DEFENDANTS' MOTION TO DISMISS

SOROKIN, United States District Judge

*1 On November 1, 2019 Anthony Alenci filed a six-count First Amended Complaint (“Complaint”) on behalf of himself and a proposed class composed of similarly situated residents of the manufactured housing community in which Alenci lives. Doc. No. 9. The Complaint alleges that the defendants, Hometown American Management, LLC and its affiliates (collectively, “Hometown”), charged Alenci and other residents of the community for water in violation of various laws as well as the governing contract. *Id.* ¶¶ 25-28. Hometown moved to dismiss the Complaint in its entirety. Doc. No. 15. Alenci opposed the motion and cross-moved for partial summary judgment. Doc. No. 21. Hometown and Alenci then submitted reply and sur-reply briefs, respectively, regarding only the motion to dismiss. Doc. Nos. 26, 32. Briefing on the cross-motion for summary judgment awaits further order of the Court. Doc. No. 40. The Court heard oral argument on the motion to dismiss on May 6, 2020, Doc. No. 39, and received supplemental post-argument submissions from the parties, Doc. Nos. 44-46.

For the reasons set forth below, the Court **ALLOWS** Hometown’s motion and **DISMISSES** the Complaint.

I. BACKGROUND¹

Alenci resides at Oak Point, a manufactured housing community in Middleborough, Massachusetts for individuals who are at least fifty-five years old. Doc. No. 9 ¶¶ 2-3, 7. Hometown owns and operates Oak Point. *Id.* ¶¶ 3, 4. Alenci owns his manufactured home, as do the other residents of Oak Point, but he, like the other residents, rents his home site from Hometown pursuant to a written agreement. *Id.* ¶ 10.

The written agreement requires each resident to pay monthly rent for the home site, and it “separately requires each resident to pay for all utilities and utility services which are separately metered at the [h]ome [s]ite.” *Id.* ¶ 11. In addition, the written agreement obligates Hometown to maintain lawns and landscaping at the home sites and in other community spaces. *Id.* ¶¶ 12, 43.

The water at Oak Point is metered individually at each home site, and the Town of Middleborough bills Alenci and the other residents directly and individually for water usage. *Id.* ¶¶ 15-17. As a result of this arrangement, Oak Point residents are subject to late fees imposed by the Town of Middleborough, and residents allegedly pay for water used by lawn irrigation systems installed at each home site. *Id.* ¶¶ 19-20. Alenci’s claims in this action challenge the legality of this method of water supply, which has been in place for decades. *Id.* ¶¶ 18, 25-67.

II. LEGAL STANDARDS

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating a pleading under this standard, a court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). A court need not credit bald assertions or empty conclusions. *Guilfoile v. Shields*, 913 F.3d 178, 186 (1st Cir. 2019). To that end, “threadbare recitals of the elements of a cause of action, supported by mere conclusory evidence, do not suffice” to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678. Dismissal is appropriate where the complaint does not set forth factual allegations, either direct or inferential, respecting each element necessary for recovery under some actionable legal theory. *Guilfoile*, 913 F.3d at 186 (quoting *U.S. ex rel. Hutcheson v. Blackstone Med., Inc.*, 647 F.3d 377, 384 (1st Cir. 2011)).

III. DISCUSSION

*2 Alenci’s Complaint alleges six claims: Count I asserts that Massachusetts law requires Hometown to supply and to pay for water for all Oak Point residents; Count II asserts that Hometown’s water metering practices violate the Massachusetts Consumer Protection Statute (“Chapter 93A”); Count III asserts that Hometown’s water metering practices breach the written agreement governing the relationship between Hometown and all Oak Point residents; Count IV asserts that a Massachusetts statute governing landlords’ responsibility to provide water to tenants prohibits Hometown’s metering and fee practices; Count V asserts that Hometown is unjustly enriched by its failure to pay for residents’ water; and Count VI asserts Alenci is entitled to injunctive relief. Doc. No. 9 ¶¶ 24-67.

As explained below, none of Alenci’s claims survive a Rule 12(b)(6) analysis.

A. Hometown is Not Required by Law to Supply and Pay for Water

Alenci suggests two sources for Hometown’s obligation to pay for water supplied to the home sites: the Massachusetts Sanitary Code, and the regulations promulgated under the Massachusetts Manufactured Housing Act (“MHA”). According to Alenci, both the Sanitary Code and the MHA regulations require Hometown to both provide water to its residents and pay for it.

The MHA governs the unique relationship between manufactured housing park operators and their residents. *See generally* Mass. Gen. Laws ch. 140, §§ 32A-32S. It has been amended several times since the earliest version of it was enacted in 1939, including in 1993, when the Commonwealth vested in its Attorney General authority to promulgate regulations deemed necessary for the MHA’s enforcement. *See Craw v. Hometown Am., LLC*, No. 18-cv-12149, 2019 WL 1298588, at *3 (D. Mass. Mar. 21, 2019) (citing Mass. Gen. Laws ch. 140 § 32S, 1993 Mass. Acts 145). In 1996, the Attorney General issued regulations which, in relevant part, remain unchanged today. *Id.*; *see* Office of the Att’y Gen. of Mass., *The Attorney General’s Guide to Manufactured Housing Community Law* (2017) [hereinafter “AG Guide”].² The MHA regulations work in tandem with the Sanitary Code, which predated the regulations by two decades, and clarify which aspects of the Sanitary Code apply in the context of manufactured housing communities. *See Craw*, 2019 WL 1298588, at *3, *8-9; *see also, e.g., AG Guide* at 21, 46, 49-50 (noting instances where the Sanitary Code applies to manufactured housing).

The MHA regulations require “an operator [of a manufactured housing community to] supply and pay for ... a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the residents, connected with a public water supply system” for “each manufactured home site.” 940 Mass. Code Regs. 10.05(4)(b)(1) (2020). This regulatory requirement mirrors the obligation imposed by the Sanitary Code on owners of such communities to supply potable water. 105 Mass. Code Regs. 410.180; *see* 105 Mass. Code Regs. 410.020 (defining “owner” to include owners and operators of “mobile home park[s]”). The MHA regulations further provide that “[r]esidents shall not be required to pay charges for hook-up and use of basic utilities,” including water. 940 Mass. Code Regs. 10.05(4)(e); *see id.* at 10.05(4)(a), (b).

However, the MHA regulations specify that the above-described universal obligation to provide and to pay for water for residents applies “except that use charges may be imposed and determined by metering at a manufactured home site by a utility or utilities.” *Id.* at 10.05(4)(e) (emphasis added). With this language, the MHA regulations provide an exception to the general rule obligating an owner to supply water.³

*3 Here, the exception to Hometown’s obligation applies. The allegations of the Complaint make plain that the Town of Middleborough supplies water directly to Alenci (and to each resident) and bills Alenci (and each resident) directly. Doc. No. 9 ¶¶ 15-16, 19. Moreover, the Complaint alleges that water usage is determined and billed based on meters installed for each home site at Oak Point, and that this “arrangement has been in place for decades.” *Id.* ¶¶ 17-18. Because this “arrangement” as described in the Complaint falls squarely within the plain language of the exception quoted above, Alenci has failed in Count I to state a claim for violation the MHA regulations.⁴

Alenci also urges that Count I alleges a violation of the Sanitary Code provision requiring owners of manufactured housing communities to “provide, for the occupant of every dwelling, ... a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the occupant, connected with the public water supply system.”⁵ 105 Mass. Code Regs. 410.180 (2020). At first blush, this regulation might appear to protect Alenci—as an “occupant” of a “dwelling” of which Hometown is the “owner”—but it does not.

The Sanitary Code is the product of regulations promulgated by the Massachusetts Department of Public Health pursuant to a 1965 statute. *See Craw*, 2019 WL 1298588, at *2 (discussing the history of the Sanitary Code). These regulations appear in Title 105, Chapter 410 of the Code of Massachusetts Regulations, and the relevant sections remain substantially unchanged since their publication in 1969. *Id.* In general, the provisions of the Sanitary Code relevant here outline landlords’ and community owners’ obligations to keep their leased premises sanitary and habitable. They apply broadly to property owners and operators. Though they extend to manufactured housing communities as well, they are not tailored to the circumstances presented in such communities. The MHA and its implementing regulations, on the other hand, are laws specifically targeted at manufactured housing communities. They post-date the Sanitary Code. And, most notably, though they impose the same general water obligation included in the Sanitary Code, they do so with an exception crafted for the unique manufactured-housing-community setting. 940 Mass. Code Regs. 10.05(4)(e).

In the particular circumstances presented by Alenci and the claim he describes in Count I, the Court concludes that the more specific MHA regulations control. A well-established canon of statutory interpretation holds that, “if a general statute and a specific statute cannot be reconciled, the general statute must yield to the specific statute.” *Alliance to Protect Nantucket Sound, Inc. v. Dep’t of Pub. Utils.*, 959 N.E.2d 413, 429 (Mass. 2011) (quotation marks omitted). “This is particularly true if the specific statute was enacted after the more general statute.” *Id.*; accord *Wing v. Comm’r of Prob.*, 43 N.E.3d 286, 291 (Mass. 2015). These principles apply equally to interpretation of regulations and other laws. Applying them here confirms that the exception to the water obligation established by the Attorney General in the MHA regulations supersedes the Sanitary Code’s general obligation in the specific circumstances presented by Alenci.

*4 Accordingly, the Motion to Dismiss is ALLOWED as to Count I.

B. Hometown Has Not Breached the Written Agreement

In Count III, Alenci claims Hometown’s water metering practices breach his written occupancy agreement.⁶ Doc. No. 9 ¶¶ 40-45. For a breach-of-contract claim to survive a motion to dismiss under Massachusetts law, a plaintiff “must do more than allege, in conclusory fashion, that the defendant breached the contract”; rather, he must “describ[e], with ‘substantial certainty’ the specific contractual promise the defendant failed to keep.” Brooks v. AIG SunAmerica Life Assurance Co., 480 F.3d 579, 586 (1st Cir. 2007). A plaintiff must “at least” plead facts identifying “who did what to whom, when, where, and why,” and explaining “what obligations were imposed on each of the parties by the alleged contract.” Higgins v. Town of Concord, 246 F. Supp. 3d 502, 518 (D. Mass. 2017) (quotation marks omitted).

In Massachusetts, interpretation of a contract’s terms is a legal question properly resolved by the Court. Allstate Ins. Co. v. Bearce, 589 N.E.2d 1235, 1238 (Mass. 1992). Absent breach, “an unambiguous agreement must be enforced according to its terms.” Schwanbeck v. Federal-Mogul Corp., 592 N.E.2d 1289, 1292 (Mass. 1992). Longstanding principles of contract interpretation—generally, and under Massachusetts law—require that “[s]pecific terms are given greater weight than general language,” In re 604 Columbus Ave. Realty Tr., 968 F.2d 1332, 1357 (1st Cir. 1992), and that individual provisions are interpreted “within the context of the contract as a whole, rather than in isolation,” Barclays Bank PLC v. Poynter, 710 F.3d 16, 21 (1st Cir. 2013).

The Complaint does not allege breach of a specific provision of Alenci’s written occupancy agreement. Rather, Alenci alleges that Hometown “is obligated by the terms of [the agreement] to maintain the lawns and landscaping of each Home Site.” Doc. No. 9 ¶ 43. “Accordingly,” alleges Alenci, Hometown’s “requirement that [Alenci] ... pay separately for all water usage, including lawn watering, is in breach of that contract.” Id. ¶ 44. These allegations fail to plausibly state a claim that Hometown has breached its written occupancy agreements.

The written agreement states: “The Home Owner will pay for all utilities and utility services which are separately metered at the Home Site or otherwise billed directly to the Home Owner by a party other than Oak Point.” Doc. No. 16-2 ¶ 7(A).⁷ It further provides that Hometown “agrees ... to maintain common areas and home sites, lawns and landscaping (provided, however, that additional gardens or plantings installed by any home owner shall be maintained by that home owner).” Id. ¶ 9(B). Alenci alleges that the irrigation system used to water the lawn at his home site is connected to his site’s water meter and, therefore, he is required to pay for the water it uses. Doc. No. 9 ¶ 20. According to Alenci, this violates the provision of the agreement requiring Hometown to “maintain ... lawns and landscaping.” The Court disagrees.

*5 Reading the agreement as a whole, the circumstances Alenci alleges—Hometown provides and operates an irrigation system to “maintain” the lawn at Alenci’s home site, while Alenci pays for the water used at his home site as a “utility service” that is “separately metered” and “billed directly” to him—are precisely what the plain language of the agreement contemplates. Hometown’s general obligation to “maintain” does not necessarily—and, in this case, expressly does not—include the narrower obligation to pay for water. The Court will not read the more general provision describing what Hometown must “maintain” to contradict or supersede the more specific provision requiring Alenci to pay for water supplied to and metered at his home site. Absent facts either suggesting that the irrigation system violates another specific provision of the agreement or alleging with “substantial certainty” that Hometown has failed to honor its obligations, Alenci’s contract claim must fail.⁸

Alenci separately claims the provision imposing water charges on residents is unenforceable because it violates the law. Doc. No. 9 ¶ 42. As noted above with respect to Count I, Hometown is not legally obligated to provide water free of charge. Therefore, this provision of the written agreement is not unlawful and, therefore, is enforceable according to its terms.

Accordingly, the Motion to Dismiss is ALLOWED as to Count III.

C. Direct Metering by Water Utilities Is Permitted

Alenci alleges in Count IV a violation of a specific provision of Massachusetts law applicable to landlord-tenant relationships (Mass. Gen. Laws ch. 186, § 14). Doc. No. 9 ¶¶ 46-50. In his briefs, Alenci alternately relies on the Massachusetts statute governing landlords' "submetering" of utilities (Mass. Gen. Laws ch. 186, § 22). Doc. No. 21 at 14. The Court considers and rejects both theories.

Section 14 of Chapter 186 requires "any lessor or landlord of any building or part thereof occupied for dwelling purposes, ... including a manufactured home or land therefor" to provide water to their tenants where such provision is "required by law or by the express or implied terms of any contract or lease." It punishes any "lessor or landlord" within its reach who, inter alia: "willfully or intentionally fails to furnish such water"; "directly or indirectly interferes with the furnishing by another of such" water; or "transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent."

Mass. Gen. Laws ch. 186, § 14 (2020) (emphasis added). The plain language of this statute does not itself require a lessor or landlord to provide water. Essentially, absent some additional affirmative legal duty to provide water, lessors of manufactured home sites are simply obligated not to interfere with the separate provision of water by the utility service. Such interference is not alleged here.

As noted above, there is no other legal obligation, either regulatory or contractual, for Hometown to provide water without charge to Alenci. Indeed, the written occupancy agreement Alenci signed states that he, as the resident and manufactured home owner, is responsible for water payments. Doc. No. 16-2 ¶ 7(A). In other words, Hometown transferred the responsibility for water payments to Alenci expressly, with his knowledge and consent. Thus, Alenci has not stated a claim for violation of

Section 14 of Chapter 186 under any of the available theories.

In his opposition briefs, Alenci attempts to characterize the direct metering of water at his home site as unlawful "submetering." Doc. No. 21 at 14; cf. Doc. No. 9 ¶¶ 17, 20 (using the term "submeter" but alleging violation of law on that basis). Of course, Alenci cannot advance new legal claims in his opposition papers, and for that reason alone this theory fails. It fares no better on the merits. Massachusetts has a statute specifically governing submetering. It defines "submetering" as "use of a meter by a landlord who receives water from a water company, which meter measures water supplied to a dwelling unit to enable the landlord to charge the tenant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area." Mass. Gen. Laws ch. 186, § 22(a) (2020) (emphasis added). It goes on to outline requirements governing submeter installation and charges imposed pursuant to such a system. Id. §§ 22(b)-(t).

*6 Alenci argues that Hometown violates the submetering statute because it fails to meet the statutory preconditions for submetering. Doc. No. 21 at 14. However, the Complaint is wholly devoid of any factual allegations suggesting or giving rise to a plausible inference that Hometown is "submetering" at all, as that term is defined by state law. Alenci has not alleged Hometown "receives water from a water company" or "charge[s] the tenant[s] ... for water." That Hometown "owns and maintains the community infrastructure, including but not limited to water and sewage disposal systems," Doc. No. 9 ¶ 14, is not such an allegation. This is especially so where the very next paragraph of the Complaint alleges: "The Town of Middleborough provides Oak Point and its residents with water from its municipal water supply and bills residents directly for water usage." Id. ¶ 15. Thus, Alenci has failed to allege facts plausibly stating that the submetering statute applies, let alone that Hometown has violated it.

Accordingly, the Motion to Dismiss is ALLOWED as to Count IV.

D. Hometown's Metering Practice Does Not Violate Chapter 93A

In Count II, Alenci alleges that Hometown's requirement that residents pay separately for water usage is an unfair and deceptive practice in violation of Chapter 93A, which is Massachusetts' consumer protection law. Id. ¶¶ 29-39. The foregoing conclusions

that Alenci has not stated violations of the various state statutes and regulations he has sought to invoke “makes quick work of [his] Chapter 93A claim[.]” Ruiz v. Bally Total Fitness Holding Corp., 496 F.3d 1, 11 (1st Cir. 2007).

Chapter 93A “broadly prohibits ‘unfair’ and ‘deceptive’ conduct in trade or commerce.” McDermott v. Marcus, Errico, Emmer & Brooks P.C., 775 F.3d 109, 116 (1st Cir. 2014). Determining whether particular conduct implicates Chapter 93A generally occurs on a case-by-case basis, though “violations of a limited number of statutes automatically give rise to liability under Chapter 93A.” Id. at 116-17. To state a Chapter 93A claim, a plaintiff must describe actions by the defendant that fall “within at least the penumbra of some common-law, statutory, or other established concept of unfairness, or were immoral, unethical, oppressive, or unscrupulous, and resulted in substantial injury.” Ruiz, 496 F.3d at 11 (quotation marks omitted).

The Complaint’s bare assertion that separate billing for water usage is an unfair practice fails to state a claim where, as here, direct metering at each individual home site is permissible under the relevant regulations and statutes. Put simply, Alenci’s Chapter 93A claim depends entirely on the alleged violations of the Sanitary Code, the MHA and its regulations, and the submetering statute. Doc. No. 21 at 16-17. He alleges no facts from which it would be reasonable to infer an unfair or deceptive practice by Hometown on any other basis. As such, Alenci’s failure to plausibly allege violations of the other state laws he has cited also dooms his Chapter 93A claim.

Accordingly, the Motion to Dismiss is ALLOWED as to Count II.

E. The Other Counts Also Fail

Two claims remain. Count V seeks to state a claim for unjust enrichment. Doc. No. 9 ¶¶ 51-58. Because Alenci’s written occupancy agreement is an enforceable contract governing the conduct at issue and authorizing the challenged behavior by Hometown, unjust enrichment is not an available theory of recovery. See Tomasella v Nestlé USA, Inc., 364 F. Supp. 3d 26, 37 (D. Mass. 2019) (“[U]nder Massachusetts law, a plaintiff who has an adequate remedy at law cannot maintain a parallel claim for unjust enrichment, even if that remedy is not viable.”). In any event, the Complaint fails to plausibly allege the elements of unjust enrichment. See id. (listing the elements under Massachusetts law). In particular, Alenci has not plausibly alleged that he has conferred any benefit upon Hometown, which Hometown has accepted under circumstances making such acceptance without payment inequitable. Rather, he has described being charged for the cost of a utility used on his own home site, in a manner consistent with both the terms of a contract he knowingly executed and the various state laws and regulations he has identified in this action.

*7 In Count VI, Alenci seeks injunctive relief. Such relief, however, is not an independent claim, but a remedy. Payton v. Wells Fargo Bank, N.A., No. 12-cv-11540, 2013 WL 782601, at *6 (D. Mass. Feb. 28, 2013).

Accordingly, the Motion to Dismiss is ALLOWED as to Counts V and VI.

IV. CONCLUSION

One more point bears mention. Anticipating that the Court might not embrace his view of the relevant state laws and regulations, Alenci alternatively requests certification to the Supreme Judicial Court of the question of the proper interpretation of the various statutes and regulations addressed in this decision. Although federal courts have the discretion to certify questions to the Supreme Judicial Court, Richardson v. UPS Store, Inc., No. 18-cv-12338, 2019 WL 2578276, *2 (D. Mass. June 24, 2019), this Court declines to do so here. This decision is narrow and results from a garden-variety application of standard rules of statutory and regulatory construction to unambiguous Massachusetts regulations and statutes.

For the foregoing reasons, Hometown’s Motion to Dismiss (Doc. No. 15) is ALLOWED, and Alenci’s First Amended Complaint (Doc. No. 9) is DISMISSED. The Clerk shall enter a judgment of dismissal with each side to bear its own costs and fees.


SO ORDERED.

All Citations

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Footnotes

- 1 The Court draws these facts from the non-conclusory allegations set forth in the Complaint.
- 2 The AG Guide is available in .pdf form on the Commonwealth's website, at <http://www.mass.gov/files/documents/2017/11/13/MHC%20Guidebook%20%28Nov%202017%29.pdf> (last visited May 13, 2020).
- 3 In an amicus brief filed in Layes v. RHP Props., Inc., No. 18-P-218 (Mass. App. Ct.), the Attorney General for the Commonwealth stated that her manufactured housing regulations “provide one exception [to the owner’s obligation to pay for the five basic utilities listed in 940 Mass. Code Regs. 10.05] relating only to [the] owners’ obligation to pay for three of the listed basic utilities,” and she identified 940 Mass. Code Regs. 10.05(4)(b)(3) as that exception. Doc. No. 44 at 18. From this, Alenci contends that the Attorney General has rejected Hometown’s reading of subsection (4) (e), and that the Court ought defer to the interpretation he claims is advanced in the Attorney General’s amicus brief. The amicus brief, however, fails to support that view. In fact, it is entirely consistent with the interpretation the Court has endorsed above.
The statement upon which Alenci relies was made in the context of a case concerning whether a manufactured housing park operator bore the obligation to maintain heating oil storage tanks. The exception the Attorney General discussed in her amicus brief was one specifically aimed at heating fuel utilities. 940 Mass. Code Regs. 10.05(4)(b)(3). At no point did the Attorney General interpret, discuss, or even refer to the separate exception at issue here, id. at 10.05(e), so the Court need not address the question of whether deference would be owed to a statement made in an amicus brief signed by an Assistant Attorney General and filed in a case factually and legally distinct from this one.
Moreover, the amicus brief elsewhere quotes a portion of the AG Guide explaining that operators may not charge residents for “required utilities includ[ing] drinkable water ... unless the utility is individually metered and [the] occupancy agreement provides for such a charge.” Doc. No. 44 at 32 (quoting AG Guide at 14). Notably, this quoted provision of the AG Guide cites 940 Mass. Code Regs. 10.05(4) as authority for the proposition that the operator may charge for drinkable water under the described circumstances, providing further support for the Court’s interpretation of the relevant regulations here. See Assad v. Longo, 816 N.E.2d 181, *4-5 (Mass. App. Ct. 2004) (unpublished) (reading the same exception the same way); see also Doc. No. 26 at 11 nn.8-9 (collecting decisions of the First Circuit and various sessions of this Court considering unpublished state-court opinions).
- 4 Alenci suggests that the exception in 10.05(4)(e) applies only to heating fuels and does not extend to water, citing the separate exception in 10.05(4)(b)(3). That reading ignores the plain language of the regulations. The (4)(e) exception expressly applies to “basic utilities described in” (4)(b), which expressly includes “potable water” in (4)(b)(1). Further, the parameters of the exceptions are different, with (4)(b)(3) essentially allowing for submetering of heat-related utilities with billing by the operator itself, and (4)(e) allowing for direct metering and billing of all utilities (including water) only by the utility company.
- 5 This section also regulates owners that provide water through submetering in accordance with Mass. Gen. Laws ch. 186, § 22. As explained below, the submetering statute does not apply, rendering this portion of the regulation inapplicable. See § III(C), infra.
- 6 The Court will address Count II, which arises under Chapter 93A, after resolving Alenci’s other substantive claims, as the 93A claim turns in large part on the plausibility of the other claims.

- 7 On a motion to dismiss, courts may consider documents attached to the parties' filings—especially where the documents are referenced in the complaint and central to the plaintiff's claim—provided their authenticity is undisputed.  Watterson v. Page, 987 F.2d 1, 3-4 (1st Cir. 1993).
- 8 For example, Alenci does not allege that Hometown uses water provided and metered through his home site to “maintain” common areas beyond his site.

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