19-P-919 Appeals Court

MOLLY HENRY & others[1] vs. BOZZUTO MANAGEMENT COMPANY.

No. 19-P-919.

Essex. May 4, 2020. - October 26, 2020.

Present: Neyman, Englander, & Hand, JJ.

Landlord and Tenant, Security deposit, Consumer protection. Practice, Civil, Summary judgment, Class action, Consumer protection case, Moot case. Consumer Protection Act, Class action, Landlord and tenant, Offer of settlement. Moot Question. Protective Order.

Civil action commenced in the Superior Court Department on December 12, 2016.

Following transfer to the Northeast Division of the Housing Court Department, motions for a protective order and for class certification were heard by David D. Kerman, J., and the case was heard by him on a motion for summary judgment.

Orestes G. Brown for the plaintiffs.
Donna M. Ashton for the defendant.

HAND, J. The plaintiffs, Molly Henry and Jon Henry, brought suit against the defendant, Bozzuto Management Company,

[1] Jon Henry and "all others similarly situated."

alleging on behalf of themselves and "all others similarly situated" that the defendant had mishandled tenants' security deposits, violating G. L. c. 186, § 15B; 940 Code Mass. Regs. § 3.17; and G. L. c. 93A. The action, initiated in the Superior Court, was transferred to the Housing Court. Having stayed certain discovery in the case, a judge of the Housing Court denied the plaintiffs' motion for class certification and entered summary judgment in favor of the defendant on all claims. On appeal, the Henrys argue that the judge erred in denying the Henrys' motion for class certification, allowing the defendant's motion for summary judgment on the plaintiffs' claims under G. L. c. 186, § 15B (4) (iii) (G. L. c. 186 claims), and G. L. c. 93A, § 9 (G. L. c. 93A claims), and allowing the defendant's motion to quash the Henrys' deposition subpoena. We discern no error in the denial of the motion for class certification or in the allowance of the motion to quash; however, we conclude that the entry of summary judgment for the defendant on the plaintiffs' G. L. c. 186 and G. L. c. 93A claims was improper. We remand the case to the Housing Court for further proceedings consistent with this opinion, including the entry of judgment for the Henrys on the G. L. c. 186 claims.[2]

[2] The defendant moved in this court to strike six statements of fact included in the Henrys' briefing and the entirety of the Henrys' arguments challenging (1) the entry of summary judgment on counts II and III of the complaint, (2) the order denying the

Facts. The following facts are uncontested. In December, 2013, the Henrys entered into a one-year written lease with AvalonBay Communities, Inc. (AvalonBay), for an apartment in a building in Danvers (Danvers property). They completed a "Move-In/Move-Out Checklist" on AvalonBay's preprinted form.[3] In addition to the first month's rent, the Henrys provided Avalonbay with a $1,250 security deposit.

During the Henrys' tenancy, Avalonbay sold the Danvers property. At the time that the Henrys signed another lease in September, 2014, the defendant managed the Danvers property.

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motion for class certification, and (3) the order allowing the motion to quash, arguing -- correctly, in our view -- that these statements and arguments are unsupported in the record and lack proper citation. See Mass. R. A. P. 16 (e), as appearing in 481 Mass. 1632 (2019). We allow the motion to strike as to the statements challenged by the defendant. With one exception concerning the current "branding" of the property in which the Henrys lived, and which the defendant does not seriously contest, the statements are or rely on the plaintiffs' representations about the defendant's uses of "Yardi," a management software program used, we understand, to generate ledgers. The statements, whether true or not, have no support in the record and are struck. See Northwest Assocs. v. Assessors of Burlington, 392 Mass. 593, 595 n.2 (1984) (striking brief where allegations within it lacked any record support); Camillo v. Camillo, 31 Mass. App. Ct. 286, 287-288 (1991). We do not, however, strike the challenged arguments, as our analyses of the summary judgment issues in this case do not turn on our reliance on those arguments.

[3] The printed disclosure on the form did not conform in all respects to the requirements of G. L. c. 186, § 15B (4) (iii). Specifically, it was not printed in bold, twelve-point typeface as required under G. L. c. 186, § 15B (2) (c).

The Henrys' security deposit was carried over to the new tenancy without the completion of a new security deposit agreement.

The Henrys terminated their lease on September 1, 2015, prior to its contractual end date of December 17, 2015. By letter dated September 15, 2015, the defendant advised the Henrys that they owed a balance of $102.94 over the amount of their security deposit. The letter enclosed an unsigned spreadsheet titled "Move Out Statement," which identified certain charges and payments, including "damages" of $1,260, assessed against the Henrys at the time that they left the apartment.[4] On October 3, 2015, Jon Henry contacted the defendant seeking a more detailed explanation of the damages to which the security deposit had been applied. In response, the defendant provided the Henrys with several photographs of the apartment condition after their move, an invoice for replacement carpet, and an invoice from a cleaning service. On October 7, 2015, thirty-six days after the Henrys' departure, the defendant sent them a copy of the "Move-In/Move-Out Checklist" that they had completed in 2013. But see G. L. c. 186, § 15B (4) (iii) (landlord required to provide tenant with itemized list of damages within thirty days of termination of tenancy). The form

[4] None of the signatures on the form was made "under pains and penalties of perjury" as required by G. L. c. 186, § 15B (4) (iii).

included notations concerning the "move-out condition" of the apartment, and a signature by a representative of "management,"[5] but it had not been signed by the Henrys.

As far as the record reveals, the Henrys had no additional contact with the defendant until nearly a year later. On October 6, 2016, the Henrys sent G. L. c. 93A, § 9 (3), demand letters to the defendant on behalf of themselves and a putative class of similarly-situated former tenants seeking (1) return of three times the Henrys' security deposit, (2) return of three times the security deposits of each "similarly situated" person, and (3) the defendant's agreement not to commit "any further violations of [G. L. c.] 186, § 15B." The defendant made two efforts to settle the case: on November 7, 2016,[6] the defendant offered to settle all claims for $2,500; on December 1, 2016, the defendant tendered a check made out to the Henrys for the

[5] Like the "Move Out Statement," this form was not signed "under the pains and penalties of perjury" as required by G. L. c. 186, § 15B (4) (iii).

[6] The first effort to settle was made thirty-two days after the date of the Henrys' c. 93A demand letter. Cf. G. L. c. 93A, § 9 (3) ("Any person receiving [a G. L. c. 93A] demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may . . . limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the [claimant]"). The demand letter states, "Via Certified Mail/RRR." We presume a reasonable time for delivery. See note 23, infra.

full amount of the Henrys' demand to settle their individual claims, $3,875.[7] Neither the settlement offer nor the tender addressed the Henrys' claims on behalf of others "similarly situated." The Henrys rejected both the offer and the tender.

On December 9, 2016, the Henrys filed suit in the Superior Court on behalf of themselves and a putative class of others "similarly situated." The complaint alleged violations of G. L. c. 186, § 15B (2) (c), as "per se unfair and deceptive practices" under 940 Code Mass. Regs. § 3.17(4)(e) (count I);[8] violations of G. L. c. 186, § 15B (4), as "per se unfair and deceptive practices" under 940 Code Mass. Regs. § 3.17(4)(f) and (g) (count II); and violations of G. L. c. 93A for the practices alleged in the first two counts (count III). The plaintiffs' claims for relief included the return of three times all plaintiffs' unlawfully retained security deposits; trebled nominal damages of at least twenty-five dollars for each plaintiff; injunctive relief requiring the defendant to cease violation of G. L. c. 186, § 15B; and attorney's fees and costs.

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[7] In making this offer, the defendant did not dispute that it mishandled the security deposit; on appeal, the defendant concedes that each of its offers was made in acknowledgement of its "mistake in the security deposit return."

[8] Specifically, failure to include the "explanatory paragraph" in the required font and type size. See G. L. c. 186, § 15B (2) (c).

Procedural history. Following both motion practice in the Superior Court and a petition to a single justice of this court, the defendant removed the action to the Housing Court. At a case management conference, the parties stipulated in writing to a discovery schedule. The schedule included deadlines for document requests, interrogatories, and requests for admissions, as well as for motions for summary judgment and class certification, but did not provide for noticing or taking depositions before the motions referred to in the stipulation were decided.[9] The parties exchanged written discovery. In responding to the defendant's request for admissions, each of the Henrys affirmed, under the pains and penalties of perjury, that they knew of other "similarly situated" tenants and of how the defendant produced its documents and correspondence.

On June 7, 2018, the Henrys served the defendant with a deposition notice pursuant to Mass. R. Civ. P. 30 (b) (6), 365 Mass. 780 (1974); the attached schedule A identified thirty-nine topics of inquiry and sought information about at least twenty-two properties managed by the defendant, and about "all other similarly situated" tenants. The defendant moved to quash the subpoena; the Henrys objected. The judge held a hearing on the

[9] The last paragraph of the stipulation provided that "[b]oth parties agree that there is no prejudice to further discovery if a class is certified by the court."

motion to quash (which, due to a scheduling error, plaintiffs' counsel did not attend[10]), afterward staying all depositions pending further court order. After another hearing in August, 2018, at which the Henrys' attorney did appear, the judge again stayed all depositions pending further order of the court -- from the hearing transcript, we conclude that the judge intended to revisit the stay, if necessary, after the resolution of the parties' motions for class certification and summary judgment.

The plaintiffs filed their motion for class certification and the defendant filed its motion for summary judgment; each side opposed the motion of the other. After a January 28, 2019, hearing on both motions, the judge denied the plaintiffs' motion for class certification and, citing Phillips v. Equity Residential Mgt., L.L.C., 478 Mass. 251 (2017), and Kohl v. Silver Lake Motors, Inc., 369 Mass. 795 (1976), allowed the defendant's motion for summary judgment, dismissing the Henrys' complaint. The plaintiffs appealed from the judgment.

Discussion. 1. Class certification. We first consider the Henrys' challenge to the denial of their motion for class certification pursuant to G. L. c. 93A. See G. L. c. 93A, § 9A (2). Acknowledging that our review of motions for class certification under G. L. c. 93A, § 9 (2), is "tempered by the

[10] The transcript of the hearing does not indicate that any of the plaintiffs was present.

'public policy of the Commonwealth [which] strongly favors G. L. c. 93A class actions,'" we are also mindful of the fact that a judge is afforded broad discretion in ruling on a motion for class certification. Bellermann v. Fitchburg Gas & Elec. Light Co., 475 Mass. 67, 71 (2016), quoting Feeney v. Dell Inc., 454 Mass. 192, 200 (2009). Reviewing for an abuse of that discretion, we discern none. See Layes v. RHP Props., Inc., 95 Mass. App. Ct. 804, 821 (2019).

"A plaintiff will prevail on her motion for certification under c. 93A upon showings that (1) she was 'entitled to seek relief under c. 93A for . . . injuries resulting from the defendant[s' alleged] unfair or deceptive act or practice'; (2) the 'assertedly unfair or deceptive act or practice that caused [her] injuries "caused similar injury to numerous other persons similarly situated"'; and (3) the plaintiff 'would "adequately and fairly represent[ ] such other persons."'" Layes, 95 Mass. App. Ct. at 822, quoting Bellermann, 475 Mass. at 72. See G. L. c. 93A, § 9 (2). The plaintiff bears the burden of providing "'information sufficient to enable the motion judge to form a reasonable judgment that the class meets the requirements" of Mass. R. Civ. P. 23, as amended, 471 Mass. 1491 (2015), and G. L. c. 93A, § 9 (2), although it does "not bear the burden of producing evidence sufficient to prove that the requirements

have been met' (emphasis added; citation omitted)."[11] Layes, supra, quoting Kwaak v. Pfizer, Inc., 71 Mass. App. Ct. 293, 297 (2008).

Here, the plaintiffs sought class certification pursuant to G. L. c. 93A, § 9 (2), based on their contention that the defendant systematically engaged in practices that violated the security deposit laws, including G. L. c. 186, § 15B, and 940 Code Mass. Regs. § 3.17, and the consumer protection statute, G. L. c. 93A. While, as we discuss infra, the plaintiffs provided factual support for some of their individual claims, they failed to make the required showing of numerosity; they did not offer anything more than argument and speculation about whether and how the defendant's practices in handling tenants' security deposits affected anyone else. There was, accordingly,

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[11] We pause to acknowledge a distinction between the certification requirements of G. L. c. 93A, § 9 (2), on which the Henrys relied, and Mass. R. Civ. P. 23. Both the statute and the rule address requirements for establishing a class for the purposes of pursuing a class action. See G. L. c. 93A, § 9 (2); Mass. R. Civ. P. 23 (a). "Although the requirements of rule 23 (a) provide a 'useful framework' for considering class certification under G. L. c. 93A," Bellermann, 470 Mass. at 53, quoting Aspinall v. Philip Morris Cos., 442 Mass. 381, 391 (2004), they "are not coextensive" with the requirements of the statute, Layes, 95 Mass. App. Ct. at 822. It is sufficient for our purposes to say that, because, in keeping with the public policy motivating G. L. c. 93A, the requirements of § 9 (2) are more readily satisfied than those of rule 23, see Layes, supra, "a certification that fails under c. 93A would fail under the requirements of rule 23 as well," Kwaak v. Pfizer, Inc., 71 Mass. App. Ct. 293, 298 (2008).

no evidentiary showing that any other person was affected as the plaintiffs were, let alone that there were numerous such persons. See Weld v. Glaxco Wellcome, Inc., 434 Mass. 81, 86 (2001), citing Makuc v. American Honda Motor Co., 835 F.2d 389, 394 (1st Cir. 1987) (where plaintiff could not produce evidence that even one other person was injured by defective axle, plaintiff's contention as to size of class was purely speculative). Cf. Gammella v. P.F. Chang's China Bistro, Inc., 482 Mass. 1, 11-15 (2019) (judge abused discretion in concluding plaintiff did not satisfy numerosity requirement given plaintiff's showing of thousands of instances of nonpayment to hundreds of employees, as well as absence of record-keeping justifying nonpayment). This was insufficient to support their claim to represent any class. In our view, the judge not only acted within his discretion in denying the defendant's motion for class certification under these circumstances; he was constrained to do so.

2. Summary judgment. We next consider the Henrys' challenge to the entry of summary judgment against them on the G. L. c. 186 claims and the G. L. c. 93A claims.[12] We review the

[12] The judge also entered summary judgment against the plaintiffs on count I of their complaint, alleging that the defendant violated G. L. c. 186, § 15B (2) (c), by failing to provide the plaintiffs with a statutorily compliant statement of the present conditions of the apartment; on appeal, the plaintiffs have not challenged that aspect of the judgment.

grant of a motion for summary judgment de novo, viewing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in the nonmovant's favor. See Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016).

a. Claims under G. L. c. 186, § 15B. As to the G. L. c. 186 claims, there is no real dispute that the defendant failed to return any part of the Henrys' $1,250 security deposit within thirty days of the termination of the plaintiffs' tenancy, nor that it failed to satisfy the statutory requirement that it "provide to the tenant within such thirty days an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof." G. L. c. 186, § 15B (4) (iii). The sanction for those violations is forfeiture by the landlord of the entire security deposit.[13] See G. L. c. 186, § 15B (6) (b); Castenholz v. Caira, 21 Mass. App. Ct. 758, 762-763 (1986). There is likewise no dispute that, having received the Henrys' October 6,

[13] To the extent the Henrys' briefing suggests that they were entitled to treble damages under § 15B for those violations, they are incorrect. As the judge correctly noted, violations of § 15B (4) (iii) do not trigger the treble damages provided for violations of other subsections of § 15B. See Phillips, 478 Mass. at 255.

2016, demand letter, the defendant responded with two attempts to settle the Henrys' claims before they filed their complaint. First, on November 7, 2016, the defendant offered double the amount of the security deposit; next, on December 1, 2016, the defendant tendered, unconditionally, triple the deposit, with interest. Both the offer and the tender exceeded the amount of damages that the Henrys, individually, could have recovered at trial under § 15B. See Phillips, 478 Mass. at 255. The Henrys rejected both the offer and the tender. The judge did not explicitly state the ground on which he granted summary judgment for the defendant; we discern from his order that he concluded that the defendant had made a reasonable tender to resolve the case, and that the tender defeated the plaintiffs' claims.

The Henrys argue that it was error to enter summary judgment against them, at least in part, due to the fact that none of the defendant's settlement efforts provided relief to the putative class, other than the Henrys. The Henrys also contend that, in any event, their individual claims were not mooted by the defendant's offer and tender of more than the amount that the Henrys, individually, could recover under § 15B.

The Henrys' briefing assumes the ongoing viability of the putative class. With the Henrys' appellate challenge to the denial of their motion for class certification now resolved against them, however, we revisit the effect of the defendant's

tender of settlement on the Henrys' individual claims. In doing so, we consider other courts' recognition that in making a tender -- which requires production of the entire amount owed, and imports an admission of liability -- and not a conditional settlement offer, a defendant "provides the plaintiff with the relief she seeks" and, thus, eliminates any "actual controversy." See Joiner vs. SVM Mgt., LLC, Ill. Supreme Ct., No. 124671, slip op. at 15 (Feb. 21, 2020) ("tender," where defendant produces entire amount owed and admits liability, eliminates any live controversy and requires dismissal of plaintiff's claims). Cf. Campbell-Ewald Co. v. Gomez, 577 U.S. 153, 156 (2016) (plaintiff's claims not mooted by offer of judgment, as parties remained adverse where plaintiff rejected defendant's settlement offer and defendant denied liability). We conclude that where, as here, the Henrys are limited to their individual claims under G. L. c. 186, § 15B (4) (iii), the defendant's tender of the full amount recoverable under § 15B in response to the Henrys' demand for return of the security deposit made the Henrys whole as to their claims under that section. It appears, accordingly, that there is no further dispute to be litigated between the Henrys and the defendant under G. L. c. 186, and the defendant has conceded the Henrys' individual claims. While we recognize that the judge was not

required to dismiss the Henrys' claims as moot,[14] we conclude that in the absence of any dispute to be litigated on the Henrys' G. L. c. 186 claims, judgment should have been entered for the Henrys on those claims.[15] Accordingly, summary judgment should not have been entered for the defendant but, instead, for the Henrys, in the amount of the tender -- here, $3,875.[16] See BourgeoisWhite, LLP v. Sterling Lion, LLC, 91 Mass. App. Ct. 114, 118-119 (2017), and cases cited (reversing summary judgment in favor of defendant and ordering new judgment to enter in favor of plaintiff).

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[14] Contrast, for example, the mandatory dismissal required under the case or controversy limitations in art. III of the United States Constitution. See LaChance v. Commissioner of Correction, 475 Mass. 757, 766 (2016).

[15] The relief that the Henrys requested in their complaint included both monetary damages and injunctive relief, specifically, that the defendant "cease and desist from violating G. L. c. 186, § 15B et seq." As the Henrys vacated the apartment before their claims arose, and in light of our affirmation of the dismissal of their class action claims, the Henrys' claim for injunctive relief is moot.

[16] A tender eliminates an actual controversy only if the tender is for the entire amount owed. See Joiner vs. SVM Mgt., LLC, Ill. Supreme Ct., No. 124671, slip op. at 15 (Feb. 21, 2020). Here, the tender amount exceeded the amount for which the defendant was liable to the Henrys on the G. L. c. 186 claims -- $1,250, plus interest. The tender, however, was made unconditionally and without return consideration. See id. It is not (for that very reason) enforceable as a contract, see id., but is, we conclude, the amount of the judgment to which the Henrys are entitled.

The Henrys cite to both Massachusetts and Federal case law in support of their argument that their rejection of the defendant's offer equal to their maximum recovery under § 15B insulates those claims from mootness. We conclude that the facts of this case are distinguishable from those on which the Henrys rely because, here, the Henrys' class claims were correctly foreclosed.

We consider the Supreme Judicial Court's recent decision in Gammella, on which the Henrys rely heavily in their briefing. There, the plaintiff, individually and on behalf of a class, asserted claims against his employer for violations of the Wage Act, G. L. c. 149, § 150, and the minimum fair wage law, G. L. c. 151, § 20. See Gammella, 482 Mass. at 2, 4. After the trial court judge denied the plaintiff's motion for class certification, but before the plaintiff appealed from that ruling, the defendant tendered settlement in an amount greater than the amount that the plaintiff could have recovered at trial for his individual claims. See id. at 6-7. A judge allowed the defendant's motion to dismiss the plaintiff's individual claims on the grounds that the plaintiff had obtained "complete relief as to his individual claims . . . and accordingly those claims are moot." Id. at 8. On appeal, the Supreme Judicial Court reversed both the denial of the motion for class certification and the dismissal of the plaintiff's individual claims, see id.

at 21, determining -- in that context, where the plaintiff's class claims had not been foreclosed -- that "the suit of a plaintiff who rejects a defendant's tender offer is not rendered moot,"[17] id. at 19. The same distinctions exist with respect to the other cases on which the Henrys rely. See Cantell v. Commissioner of Correction, 475 Mass. 745, 753-754 & n.16 (2016) (plaintiff inmates' individual claims based on their placement in "special management unit" not moot, despite individual plaintiffs' release from those units, because "the alleged wrongs set out in the amended complaint continue to affect the

[17] In doing so, the Gammella court cited to Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group, 469 Mass. 800, 805 (2014), for the proposition that where a defendant makes a tender of settlement after the date set for payment has expired (and, in that case, six days before trial) a plaintiff may reject the tender offer and litigate its claim to completion. See Gammella, 482 Mass. at 19. We note that the mootness issue in Barron Chiropractic was decided "[u]nder common-law principles of contract" applicable to "'action[s] in contract' under [G. L. c. 90, § 34M.]" Barron Chiropractic, supra, quoting Boehm v. Premier Ins. Co., 446 Mass. 689, 691 (2006). Passing the question whether such contract principles apply to actions under G. L. c. 186, § 15B (4) (iii), cf. Exhibit Source, Inc. v. Wells Ave. Business Ctr., LLC, 94 Mass. App. Ct. 497, 502 (2018) (plaintiff's claim that landlord wrongfully withheld portion of security deposit with intention of converting it sounded in tort, not contract), we note that here, the settlement offer was made thirty-two days after the date of the plaintiff's demand in the case, and before suit had been filed. We also consider that, unlike the statute at issue in this case, G. L. c. 186, § 15B (4) (iii), the statute in Barron Chiropractic, G. L. c. 90, § 34M, provided for recovery of interest, attorney's fees, and costs on a successful claim. See G. L. c. 90, § 34M; Barron Chiropractic, supra at 803.

putative class"); Wolf v. Commissioner of Pub. Welfare, 367 Mass. 293, 293-294, 300 (1975) (plaintiff's individual claims for failure to make timely replacement of benefits not moot, despite department's replacement of named plaintiff's checks, where plaintiff might continue to represent class of others similarly situated).[18]

In each of these cases, the plaintiff's class action claims had been resurrected on appeal; to moot the plaintiff's individual claims in that context would deprive the class of its named representative, potentially complicating the ability of the class to pursue its claims, and ultimately "frustrat[ing] the objectives of class actions." Gammella, 482 Mass. at 19-20, quoting Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326, 339 (1980) (Roper). The Henrys are positioned differently -- having appealed and lost on their attempt to certify a class, they retain an interest only in their individual claims.[19] The

[18] The Supreme Judicial Court did not hold that the satisfaction of a plaintiff's claim could never render the claim moot; rather the court stated that "[i]f the underlying controversy continues, a court will not allow a defendant's voluntary cessation of his allegedly wrongful conduct with respect to named plaintiffs to moot the case for the entire plaintiff class" (emphasis added). Wolf, 367 Mass. at 299.

[19] We do not see either Campbell-Ewald, 577 U.S. 153, or Roper, 445 U.S. 326, each of which was cited in Gammella as part of the court's mootness analysis, as being on point in this case. The Gammella court's discussion of Campbell-Ewald was part of its consideration of "the effect of a [Mass. R. Civ. P.] 68 offer [for judgment]" -- a procedural element not present here -- and it passed the question of the effect of a tender in

defendant has tendered the maximum recovery to which the Henrys could have been entitled; as a result, there remains nothing to litigate with respect to their claims under § 15B.

In light of the undisputed fact that the defendant violated G. L. c. 186, § 15B (4) (iii), and given the defendant's tender, we conclude that judgment should have entered for the Henrys on count II in the amount of the tender, $3,875, plus statutory interest.

b. Claims under G. L. c. 93A, § 9. We agree with the Henrys that the defendant was not entitled to summary judgment on the G. L. c. 93A claims.

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the "full amount of the plaintiff's individual claim" under other circumstances. See Gammella, 482 Mass. at 17-18. See also Mass. R. Civ. P. 68, 365 Mass. 835 (1974). In Roper, as in this case, the plaintiffs brought both individual claims and claims on behalf of a class, the plaintiffs rejected the defendant's tender of full satisfaction of their individual claims, and the judge denied the plaintiffs' motion for class certification; however, in Roper, the judge then entered judgment for the plaintiffs, over their objection, in full satisfaction of their individual claims. See Roper, 445 U.S. at 329-330. The Roper court ruled that, where the entry of judgment precluded the plaintiffs from appealing from the denial of their motion for class certification, their individual claims could not be mooted in that way. See id. at 339. Here, however, the Henrys have not prevailed on their claim that the judge erred in denying their motion for class certification, and so they do not risk the outcome that the ruling in Roper addressed. United States Parole Comm'n v. Geraghty, 445 U.S. 388 (1980), to which the Henrys' brief briefly refers, is to similar effect.

Chapter 93A, § 9 (1), provides a remedy for, inter alia, "[a]ny person . . . who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by [G. L. c. 93A] section two." We accept, as the Henrys argued in the Housing Court, and as they contend on appeal, that the defendant's failure to comply with G. L. c. 186, § 15B (4) (iii),[20] was an unfair and deceptive practice for the purposes of c. 93A, and thus a violation of G. L. c. 93A, § 2. See G. L. c. 93A, § 2 (a) (declaring unlawful "unfair or deceptive acts or practices in the conduct of any trade or business"); 940 Code Mass. Regs. § 3.17(4)(f), (g) (defining certain violations of G. L. c. 186, § 15B, as per se "unfair or deceptive practices"). See also Casavant v. Norwegian Cruise Line Ltd., 460 Mass. 500, 504 (2011) (violation of regulation constituted unfair or deceptive act as matter of law); 940 Code Mass. Regs. § 3.16(3) (act or practice that "fails to comply with existing statutes, rules, regulations or

[20] Specifically, the defendant's failure to give the Henrys, within thirty days after the termination of their tenancy, an itemized list of damages and documentation, signed under the pains and penalties of perjury, as required by G. L. c. 186, § 15B (4) (iii), and 940 Code Mass. Regs. § 3.17(4)(f), and to return the security deposit (or the balance of it) with interest within thirty days of the termination of their tenancy, see G. L. c. 186, § 15B (4) (iii); 940 Code Mass. Regs. § 3.17(4)(g), as well as the defendant's reliance on an unsigned "Move-In/Move-Out Checklist" as grounds for withholding the security deposit. See G. L. c. 186, § 15B (4) (iii).

laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection" constitutes per se violation of G. L. c. 93A, § 2). But see Klairmont v. Gainsboro Restaurant, Inc., 465 Mass. 165, 174 (2013) (violation of regulatory code "will be a violation of c. 93A, § 2 [a], only if the conduct leading to the violation is both unfair or deceptive and occurs in trade or commerce").

In order to prevail on a claim for damages under § 9, the plaintiff must also prove a causal connection between the unfair or deceptive act or practice and a resulting injury. See G. L. c. 93A, § 9 (1) (requiring causal relationship between unfair and deceptive act and plaintiff's "injur[y]"); Hershenow v. Enterprise Rent-A-Car Co. Of Boston, Inc., 445 Mass. 790, 799 (2006). "[T]o meet the injury requirement under G. L. c. 93A, § 9 (1) . . . , a plaintiff must have suffered a 'separate, identifiable harm arising from the [regulatory] violation' that is distinct 'from the claimed unfair or deceptive conduct itself.'" Bellermann, 475 Mass. at 73, quoting Tyler v. Michaels Stores, Inc., 464 Mass. 492, 503 (2013). See Exhibit Source, Inc. v. Wells Ave. Business Ctr., LLC, 94 Mass. App. Ct. 497, 501 (2018) (tenant who claimed breach of lease contract "harmed" for purposes of G. L. c. 93A, § 11, by landlord's

"considered and intentional" failure to return unused portion of tenant's security deposit).

The plaintiffs' primary brief makes no reference to any injury caused to the Henrys by the defendant's violations of G. L. c. 186, § 15B.[21] Nonetheless, we conclude that the defendant's retention of the Henrys' security deposit for more than thirty days after the termination of the Henrys' tenancy,[22] given the defendant's failure to comply with § 15B (4) (iii), resulted in an injury for the purposes of G. L. c. 93A. The defendant's failure to comply with § 15B resulted in the Henrys' being unjustifiably deprived of the use of money that belonged, under the statute, to them. Indeed, the defendant's inclusion of interest in its settlement offer suggests that the defendant recognized as much. In the face of this showing, the defendant was not entitled to summary judgment on the Henrys' G. L. c. 93A claims. See Bulwer, 473 Mass. at 680.

In ruling on the defendant's summary judgment motion, the judge implicitly determined that the defendant's settlement offer was reasonable for the purposes of G. L. c. 93A, § 9, and, citing to Kohl, concluded that the offer therefore "defeat[ed]

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[21] In their reply brief, however, they point to the defendant's failure to return the security deposit as it was required to do under § 15B (4) (iii).

[22] In fact, the defendant retained the deposit for more than a year after the Henrys' departure from the property.

the [G. L. c.] 93A claim[s]."[23] Without deciding whether a determination of the settlement offer's reasonableness was premature, see Whelihan v. Markowski, 37 Mass. App. Ct. 209, 213 (1994), quoting Kohl, 369 Mass. at 803 (where judge found violation of G. L. c. 93A, he was "next" required to determine whether defendants limited liability through reasonable settlement offer), we disagree with the judge to the extent that he determined that a reasonable settlement offer "defeats" a G. L. c. 93A claim. The effect of such an offer is to limit the defendant's liability for damages, costs, and fees under G. L. c. 93A, § 9, not to extinguish the claims themselves. See G. L. c. 93A, § 9 (3) ("Any person receiving [a G. L. c. 93A] demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may . . . limit any recovery to the relief tendered if the court finds that the relief

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[23] We discern a viable basis for such a finding in the evidence that the defendant offered the full amount to which the Henrys were entitled within thirty days of the receipt of the Henrys' G. L. c. 93A demand letter, and that the defendant's filings in the Superior Court included an affidavit complying with the requirements of the statute. See G. L. c. 93A, § 9 (3) (requirements for limitation of liability based on reasonable offer in response to demand); Hopkins v. Liberty Mut. Ins. Co., 434 Mass. 556, 568 (2001) (settlement offer would have been timely if made "within thirty days of receiving" plaintiff's G. L. c. 93A demand letter [emphasis added]). But see G. L. c. 93A, § 9 (3) (written tender of settlement required within thirty days of "mailing or delivery" of demand letter).

tendered was reasonable in relation to the injury actually suffered by the [claimant]"). The defendant has asserted that any relief here should be limited to the relief tendered in its reasonable settlement offer (or its subsequent tender). Should the Henrys prevail on their individual G. L. c. 93A claims against the defendant, the judge shall address this in the first instance on remand. See G. L. c. 93A, § 9 (3).

3. Motion to quash (protective order). The Henrys argue that the judge erred in allowing the defendant's motion for a protective order[24] and in "staying all discovery."[25] We review the judge's ruling allowing the defendant's motion for a protective order for an abuse of discretion. See Chambers v. RDI Logistics, Inc., 476 Mass. 95, 110 (2016); Merles v. Lerner, 391 Mass. 221, 226 (1984).

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[24] Although titled a "motion to quash," the motion was brought pursuant to Mass. R. Civ. P. 26 (c) and, thus, is more accurately identified as a motion for a protective order. Compare Mass. R. Civ. P. 26 (c), as amended, 474 Mass. 1401 (2016) (providing person served with notice of deposition with right to move for appropriate relief), with Mass. R. Civ. P. 45 (f) (3), as amended, 470 Mass. 1401 (2015) (providing right to seek protective order to nonparty served with deposition subpoena).

[25] In their brief, the Henrys represent that the judge stayed "all discovery" with this order. He did not do so. The judge ordered that "discovery is stayed per my order issued 7/10/18." The stay included in the judge's July 10, 2018, order was limited to "all depositions."

A judge may issue a protective order "[u]pon motion . . . and for good cause shown." Mass. R. Civ. P. 26 (c), as amended, 474 Mass. 1401 (2016). The defendant's "good cause" for seeking to forestall the deposition at issue here until after the motion for class certification had been decided is readily apparent -- through counsel, the parties had drafted a joint discovery schedule that made no reference to noticing depositions before the judge heard argument on any motions for summary judgment and class certification.[26] See Mass. R. Civ. P. 29, 365 Mass. 780 (1974) (parties permitted to "modify the procedures provided by these rules for other methods of discovery"). We discern no abuse of discretion in the judge's implicit determination that the Henrys had stipulated that no depositions would be noticed unless and until the class action was certified, nor in the judge's ruling that held the parties to the terms of their agreement. "[A] party may not disregard a stipulation given by him, nor can he revoke or escape from it at his will. His consent, once made a part of the record, binds him until he is relieved from it by judicial action." Kalika v. Munro, 323 Mass. 542, 543 (1948) (consent to adoption). Our review of the hearing transcript indicates that the judge weighed the parties' stipulation in his ruling staying depositions pending further

[26] The agreement explicitly contemplated additional discovery "if a class is certified by the court."

court order and "[took] into account considerations of efficiency and economy," Matter of Roche, 381 Mass. 624, 637 (1980). See Mass. R. Civ. P. 26 (c).

Finally, to the extent that the Henrys argue that in allowing the defendant's motion for a protective order, the judge improperly foreclosed their ability to obtain the discovery that they needed to establish the existence of a class of similarly-situated persons, we are not persuaded. As we have noted, supra at note 25, contrary to the Henrys' representation, the judge did not stay "all discovery" when he allowed the motion for protective order; he merely continued his earlier stay of deposition practice. Nothing in the judge's order, or in the parties' discovery stipulation, prevented the Henrys from seeking discovery relating to the existence of other possible class members through the use of other discovery tools, including interrogatories, requests for production of documents, and requests for admissions.[27] The judge did not abuse his discretion. See Chambers, 476 Mass. at 110.

Conclusion. As to count II (G. L. c. 186, § 15B [4], claims), the judgment is reversed, and judgment shall enter for the Henrys on that count in the amount of $3,875, plus statutory

[27] The judge made this very clear during the August 6, 2018, hearing on the defendant's motion for protective order, asking whether the Henrys could accomplish their goal through "a single interrogatory."

interest. As to count III (G. L. c. 93A, § 9, claims), the judgment is vacated, and the case is remanded to the Housing Court for further proceedings consistent with this opinion. The judgment is otherwise affirmed.

So ordered.