SJC-12902

MAUREEN BLAKE & others[1] vs. HOMETOWN AMERICA COMMUNITIES, INC., & another.[2]

Bristol. September 9, 2020. - November 24, 2020.

Present: Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.

Manufactured Housing Community. Practice, Civil, Summary judgment, Class action, Damages, Attorney's fees. Consumer Protection Act, Landlord and tenant, Class action, Damages. Contract, Lease of real estate. Landlord and Tenant, Rent. Damages, Consumer protection case, Attorney's fees.

Civil action commenced in the Southeast Division of the Housing Court Department on September 28, 2012.

A motion for class certification was heard by Anne Kenney Chaplin, J.; and motions for summary judgment were heard by Wilbur P. Edwards, Jr., J., the remaining issues were heard by him, and a motion for reconsideration was also heard by him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

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[1] Richard Blake, Barbara Craw, Jennifer Crowley-Rhodes, Pat A. Henry, Nancy Joseph, Linda McCarey, James McDonald, Cindy A. McKenna, Timothy Robinson, and Oakhill Community Residents Association, Inc.

[2] Hometown Oakhill, LLC.

Robert Kraus for the defendants.
Peter V. Tekippe for the plaintiffs.
The following submitted briefs for amici curiae:
Brian J. O'Donnell & Ethan R. Horowitz for Manufactured Home Federation of Massachusetts, Inc., & others.
Patrick T. Voke, Shanna M. Boughton, & Justin L. Amos for Manufactured Housing Institute.
Jeffrey w. Hallahan, II, for Massachusetts Manufactured Housing Association, Inc.
Daniel A. Less, Assistant Attorney General, for the Attorney General.

KAFKER, J. Under § 32L (2) of the Manufactured Housing Act, G. L. c. 140, §§ 32A-32S (act), "[a]ny rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair." In the instant case, the defendants, the new owners of a manufactured home community, charged those who had rented their lots after the defendants purchased the community ninety-six dollars per month more for lot rent than those who had rented their lots before the change in ownership, even though the lots were essentially if not exactly the same. A group of ten people who were paying the additional lot rent brought suit, and a class was certified without opposition.

A judge in the Housing Court determined that the additional rent for essentially the same lot was a violation of § 32L (2). We affirm, as we reject the owners' argument that time of entry into a lot rental agreement renders the renters dissimilar under

the statute. If this were the case, every time a new lot lease were entered into, a higher rent could be charged. Such a reading of the statute would defeat its purpose, which is to provide relatively uniform, stable, long-term lease and community cost-sharing arrangements for those renting manufactured housing lots.

We do, however, reverse and remand the case to the Housing Court to reconsider a different judge's class certification decisions. Although there was no opposition to the certification of the class, and we conclude that a class was properly certified, the judge erred in requiring class members to opt in. "Opt-in" classes are contrary to the purpose of class action suits and our consumer protection statute, and they are not permitted under Mass. R. Civ. P. 23, as amended, 471 Mass. 1491 (2015), or G. L. c. 93A, § 9 (2).

The subclassifications for damages calculations also require reconsideration, as the judge who conducted a trial on damages considered improper factors. In the instant case, the owners of the manufactured housing community increased the rent on lots whose only distinguishing characteristic was that the lease began after the change in ownership. Therefore, the judge should have certified a class defined by the time of entry into rental agreements -- that is, post-ownership versus pre-ownership -- to address this statutory violation. Moreover, the

judge should have awarded damages for class members on the basis of who paid the ninety-six dollars more per month in rent, in whole or part, for a lot that was essentially the same as a lot renting for ninety-six dollars less.[3]

1. Background and procedural history. The defendants operate a manufactured housing community in Attleboro. After acquiring the property on which the community rests in January of 2006, the defendants uniformly increased lot rent on new lot rental agreements by ninety-six dollars. That meant that those who entered into lot rental agreements after the change in ownership paid ninety-six dollars per month more to rent a lot than those who entered into such agreements before the change in ownership, even though the lots rented were of similar sizes and had similar amenities.

In September 2012, ten named plaintiffs filed a complaint seeking relief under § 32L (2) and G. L. c. 93A. The plaintiffs were described in the complaint as "residents" and "tenants" of the defendants in the community, as such terms are defined in 940 Code Mass. Regs. § 10.01 (1996). The regulations define a "[r]esident" as "any person who normally resides in a

[3] We acknowledge the amicus briefs submitted by Manufactured Home Federation of Massachusetts, Inc.; Sandcastle Mobile Home Owners Association, Inc.; and 739 Homeowners Association, Inc.; by Manufactured Housing Institute; by Massachusetts Manufactured Housing Association, Inc.; and by the Attorney General.

manufactured home in a manufactured housing community, regardless of whether or not he or she has an occupancy agreement with the operator," and a "[t]enant" as "a person who has an occupancy agreement or oral tenancy agreement with an operator for the use and occupancy of a manufactured home site, common areas, facilities, and other appurtenant rights." Id. The act also refers to both tenants and residents, providing protections for both. See, e.g., G. L. c. 140, § 32J (prohibiting no-cause evictions and requiring extensive procedural protections for residents prior to actual eviction); G. L. c. 140, § 32P (requiring bona fide, good faith offers of five-year leases to tenants).

The plaintiffs alleged that the defendants' creation and maintenance of two separate classes of rent violated § 32L (2) by creating a "change in rent which does not apply uniformly to all manufactured home residents of a similar class," and that, pursuant to G. L. c. 140, § 32L (7), they were due damages under G. L. c. 93A. A judge in the Housing Court (class certification judge), without opposition, certified a class consisting of "individual unit owners who reside within Hometown America Communities Oak Hill Park and who acquired the units after February 1, 2006." The class certification judge also ordered that a letter be sent to potential class members, giving them a sixty-day period to opt in or out of the class.

The parties cross-moved for summary judgment in December 2014. A second Housing Court judge granted the plaintiffs' motion for summary judgment, while denying the defendants' motion. In October 2015, the defendants filed a motion for reconsideration, presenting expert affidavits and requesting the opportunity to rebut the statutory presumption that "[a]ny rule or change in rent which does not uniformly apply to all manufactured home residents of a similar class . . . is unfair." G. L. c. 140, § 32L (2). The judge denied this motion.

In December 2016, the second judge conducted a trial that focused primarily on evidence regarding damages. In July 2017, the court issued a judgment granting damages to the plaintiffs and dividing the class members into five different subclasses.[4] At the end of trial, the judge also had granted the defendants' request for a directed finding in their favor as to the

[4] The second Housing Court judge created the following subclasses: individuals who resided in their unit and paid the excess monthly rent; individuals who resided with a coowner who did not opt into the action; individuals who rented their unit for at least a portion of time to a third party; individuals whose status was determined by "a combination of factors such as co-ownership, rental during a period of time, statute of limitations or similar factors"; and individuals who failed to opt into the class, were found to not have an interest in the manufactured housing unit, failed to testify, or did not testify credibly.

plaintiffs' allegation that the defendants' violation of G. L. c. 93A was willful and knowing.[5]

The plaintiffs requested $104,850.30 in attorney's fees and costs. The defendants opposed this motion, objecting to specific requests for certain itemized fees. In December 2017, the second judge awarded $87,800.30 in attorney's fees and costs to the plaintiffs, reducing the amount of attorney's fees and costs originally requested in response to the defendants' motion.

The defendants appealed to the Appeals Court from the ruling granting the plaintiffs' motion for summary judgment and denying the defendants' motion for reconsideration. The plaintiffs cross-appealed from the determination of damages with regard to certain individuals in the class and the second judge's decision at trial not to allow the admission of certain evidence.

2. Discussion. a. Summary judgment. "We review a grant of summary judgment de novo to determine '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 judgment as a matter of law.'" DeWolfe v. Hingham

[5] The plaintiffs have not appealed from the ruling that the defendants' violation of G. L. c. 93A was not willful and knowing. Therefore, we do not address it.

Centre, Ltd., 464 Mass. 795, 799 (2013), quoting Juliano v. Simpson, 461 Mass. 527, 529–530 (2012). When reviewing a decision on cross motions for summary judgment, the evidence is reviewed in the light most favorable to the unsuccessful party, here, the defendants. Rawan v. Continental Cas. Co., 483 Mass. 654, 655 (2019). The court must determine whether, in viewing the evidence in the light most favorable to the defendants, the plaintiffs are entitled to judgment as a matter of law. Id. at 662.

The defendants contend that, under G. L. c. 140, § 32L (2), the plaintiffs may be charged more in rent because they entered into a lot rental agreement at a later time. The defendants argue that the timing of entry into lot rental agreements renders the plaintiffs not in a "similar class" under the statute, even if the lots rented are essentially the same with the same amenities. This contention is incorrect.

"[T]he duty of statutory interpretation rests ultimately with the courts" (citation omitted). Souza v. Registrar of Motor Vehicles, 462 Mass. 227, 230 (2012), and cases cited. We interpret a statute based on the intent of the Legislature, ascertained from "all the statute's words, 'construed by the ordinary and approved usage of the language' and 'considered in connection with the cause of its enactment . . . and the main object to be accomplished'" (citation omitted). Meyer v. Veolia

Energy N. Am., 482 Mass. 208, 211 (2019). "Our principal objective is to ascertain and effectuate the intent of the Legislature in a way that is consonant with 'common sense and sound reason'" (citation omitted). Id. at 212. The Attorney General is authorized to interpret § 32L (2), and therefore, "her interpretation is entitled to substantial deference, unless it is inconsistent with the plain language of the statute." Boelter v. Selectmen of Wayland, 479 Mass. 233, 242 (2018), citing Smith v. Winter Place LLC, 447 Mass. 363, 367-368 (2006). See G. L. c. 140, § 32S (granting power to implement interpretative regulations to Attorney General).

As mentioned, § 32L (2) provides that "[a]ny rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair." Charging different amounts of rent for essentially the same lot appears to violate the uniformity presumption presented by the plain language of the statute. Although different lot sizes or amenities would clearly divide the residents into different classes, time of rental does not appear to defeat the uniformity principle contained within the statute. If every time a lot turned over, a different class were created, there would be no uniformity whatsoever.

The act and its regulations also prioritize distributing manufactured housing fees and costs evenly. See G. L. c. 140, § 32G (mandating each home owner pay uniform license fee, rather than variable property taxes); Wright v. Peabody, 331 Mass. 161, 164-165 (1954) (§ 32G, requiring uniform license fees per lot, is adequate way of protecting community owners from paying another's property tax); 940 Code Mass. Regs. § 10.05(4)(b)-(c) (1996) (operator shall supply and pay for water, sewage disposal, and basic utilities, and may recoup these costs through nondiscriminatory rent increases); 940 Code Mass. Regs. § 10.03(2)(e) (1996) (prohibiting per capita occupant fees except where such fees relate to actual costs and conform rent to that of resident households with same number of adult occupants).

More generally, the act also prioritizes maintaining manufactured housing communities as affordable housing options by protecting residents from unfair practices or arbitrary distribution of operating costs. Section 32L (2) clearly states this concern by creating a presumption that nonuniform rents for similar classes of residents are unfair. The act as a whole protects residents against evictions, park closures, and monopolies on services. See, e.g., G. L. c. 140, § 32J (prohibiting no-cause evictions and requiring extensive procedural protections for residents prior to actual eviction);

G. L. c. 140, § 32L (3) (prohibiting operators from restricting residents in their choice of providers of fuel, goods, services, and accessories and from instituting unreasonable insurance requirements); G. L. c. 140, § 32L (7A) (mandating community operators to provide notice and relocation costs upon closure of community); G. L. c. 140, § 32R (providing residents with right of first refusal upon sale of community).

Indeed, the vulnerability of manufactured home residents and the need for their protection resound throughout the legislative history. The Office of the Attorney General supported the enactment of the 1973 amendments to the act, which included the adoption of § 32L (2), see St. 1973, c. 1007, § 2, by stressing the importance of "comprehensive protection to the owners of mobile homes, which protection has until this time been lacking under our statutes." Letter from Assistant Attorney General Walter Mayo to Edward Morrow, Legislative Secretary to the Governor (Nov. 1, 1973).

When the 1993 amendments were passed, the Attorney General wrote:

> "Because manufactured housing offers the opportunity of relatively low-cost homeownership, it has increasingly attracted low-income, particularly elderly and single-parent, families in need of affordable housing. However, due to the unique characteristics of manufactured housing, wherein the resident owns his own home but rents the cement pad and lot upon which it sits, standard residential landlord-tenant law fails to sufficiently protect the tenants of these communities. . . . Because of their

> inability to move elsewhere, residents are often subjected to unfair rules and other restrictions on their lives that would never be tolerated in any other residential community."

Letter from Attorney General Scott Harshbarger to Governor William Weld (Aug. 10, 1993).

Upon signing the bill into law, the Governor explicitly referenced "the urgent need to address a crisis faced by a large number of elderly and low-income residents of mobile home parks," and the "urgent necessity of protecting the affordable housing option which manufactured housing communities offer to residents of the Commonwealth." Letter from Governor William Weld to the Legislature (Aug. 13, 1993).

Although we have not specifically addressed § 32L (2),[6] we have echoed the more general concern about the vulnerability and need for protection of manufactured home residents. In Greenfield Country Estates Tenants Ass'n, Inc. v. Deep, 423 Mass. 81, 83 (1996), we stated, "Both the Legislature and the courts of the Commonwealth have recognized that manufactured housing communities provide a viable, affordable housing option

[6] We have discussed § 32L (2) only once before in passing, when the owner of a manufactured housing community challenged the rent control bylaw adopted by the town of Chelmsford. Chelmsford Trailer Park, Inc. v. Chelmsford, 393 Mass. 186 (1984). Our analysis there did not interpret § 32L, but simply stated that "[i]n granting or denying adjustments [to rent], . . . the rent board must be mindful of the provision of G. L. c. 140, § 32L (2)." Id. at 193.

to many elderly persons and families of low and moderate income, who are often lacking in resources and deserving of legal protection."

In sum, the language and legislative history of § 32L (2) provide for a presumption of uniform treatment and protection of the low income residents of manufactured housing communities, new and old. Nowhere does the text or legislative history of the statute indicate that a turnover in a lot lease would create a new class of resident and subject that new resident to paying more rent than others for the same lot. If every such change created a new class of resident, and allowed unrestricted rent increases, there would be no uniformity and no protection.

The defendants argue that a settlement agreement negotiated by the Attorney General, the rent control board of Chelmsford, and a manufactured park owner in 1987, which encompassed a master lease, demonstrates the Attorney General's interpretation of the act, which is entitled to some deference. See Commonwealth vs. James DeCotis, Mass. Super. Ct., No. 87-7160 (Suffolk County 1987). We conclude that the settlement agreement is not binding and that the Attorney General's guidance, including its contemporaneous interpretation of the act and its amendments discussed above, and the Attorney General's most recent advisories, do not support the defendants'

position that any turnover in rent creates a different class of resident.

The parties in the 1987 case agreed to the following language in the master lease:

> "Whenever a tenant of his own volition vacates, removes the mobile home from his lot, transfers or sells his or her mobile home for other than nominal monetary consideration to an immediate family member or is evicted pursuant to legal proceedings, a new tenant shall be regarded as a member of a dissimilar class for the purpose of construing [G. L. c. 140, § 32L (2)]."

This settlement agreement, however, is just that -- a settlement agreement. It creates no legal precedent, either by its nature or by its own terms. It explicitly states: "The Master Lease Agreement set forth below is part of a multi-faceted settlement that has been achieved by all of the above litigants. It is not intended to create nor shall it create any financial, legal or other obligations on the part of the COMMONWEALTH and/or TENANTS ASSOCIATION under the Master Lease but merely to have the aforesaid class action tenant representatives bind the present and future tenants of PARK." The parties in this case are not part of said class, and have reached no such agreement. We are also cognizant that the settlement agreement concerned a community that was part of a rent control district. Consequently, there were other significant protections in place governing increases in rent.

In regard to deference to the Attorney General more generally, we emphasize that the Attorney General submitted an amicus letter to this court explicitly stating that the master lease settlement "did not amount to an official interpretation of [§ 32L (2)] to the effect that new and present tenants are always 'dissimilar.'"

The Attorney General's amicus letter further points to the regulations at 940 Code Mass. Regs. §§ 10.00 (1996) and the Attorney General's guide to the act for an "actual interpretation of § 32L (2)." The Attorney General's guide explicitly references § 32L (2)'s use of the term "similar class" only once, stating that, "[i]n general, any change in rent must be applied uniformly to all residents of a similar class. A rent increase that is not applied uniformly to residents who receive similar services and have similar lot sizes may be unfair under the [act]." Attorney General's Guide to Manufactured Housing Community Law 24 (Nov. 2017). The regulations refer to "non-discriminatory rent increases." 940 Code Mass. Regs. §§ 10.01, 10.05(4)(c), 10.05(8) (1996). The Attorney General indicates that, together, these interpretations of the act indicate that the determination of a similar class under § 32L (2) is "a fact-specific inquiry that principally relates to the nature of the residents' lots and the services they receive," although it is possible that such an inquiry

could lead to a determination that charging new residents a higher rent might be fair "based on . . . particular circumstances." All of this guidance is consistent with our interpretation of § 32L (2).

In light of the text of the statute as a whole, the Attorney General's guidance, and the legislative history, we hold that time of entry into an occupancy agreement does not create a dissimilar class under § 32L (2). Such an interpretation would allow a manufactured housing community operator to completely circumvent § 32L (2) by creating a new class each time a new lease is signed, and remove the protections that the statute offers against unfair and non-uniform changes in rent. See Casseus v. Eastern Bus Co., 478 Mass. 786, 801 (2018) ("An interpretation that causes a statute to have no practical effect is absurd" [quotation, alteration, and citation omitted]).

This interpretation does not in any way suggest that rent can never be raised in manufactured housing communities. We recognize, as did the Legislature, that manufactured housing owners will not create or preserve such low income housing communities if they cannot get an adequate return on their investment and recoup the additional costs imposed by the passage of time. As the Governor stated in his signing statement, "It is my hope that this act will assist both

manufactured home community tenants and owners by making manufactured housing communities in the Commonwealth a more secure and affordable investment." Letter from Governor William Weld to the Legislature (Aug. 13, 1993). Although the act stresses uniformity and stability, especially in its requirement that leases of five years be offered, it does not interfere with the determination of fair market rental rates within a given five-year period or at the turnover of a five-year period, so long as such rates are uniform for similar classes of lots.[7] Community owners and operators have been, and continue to be, free to enter into fair occupancy agreements so long as they do not discriminate between similar classes of residents.

b. Motion for reconsideration. We briefly address the defendants' motion for reconsideration, in which they provided information on "vacancy deregulation," or "vacancy decontrol," a method by which regulated rents can account for changes in residency after establishing a rent by the change of time. According to the defendants, this evidence "demonstrated the plain error of the original decision and manifest injustice that would result."

[7] Title 940 Code Mass. Regs. § 10.03(5) (1996) notes that operators are responsible for offering five-year leases at fair market rental rates. These rates are "subject to any applicable rent control restrictions" and do not replace or supersede applicable rent control laws.

A motion for reconsideration "should specify (1) 'changed circumstances' such as (a) newly discovered evidence or information, or (b) a development of relevant law; or (2) a particular and demonstrable error in the original ruling or decision." Audubon Hill S. Condominium Ass'n v. Community Ass'n Underwriters of Am., Inc., 82 Mass. App. Ct. 461, 470 (2012), citing Peterson v. Hopson, 306 Mass. 597, 600 (1940). In reviewing a decision to deny a motion for reconsideration, this court reviews for an abuse of discretion. See Commissioner of Revenue v. Comcast Corp., 453 Mass. 293, 303, 312-313 (2009).

We discern no abuse of discretion here. The defendants' motion presented no evidence or argument that could not have been presented prior to summary judgment. "There is no error in the denial of a motion that merely seeks, as this one did, a 'second bite at the apple.'" Liberty Square Dev. Trust v. Worcester, 441 Mass. 605, 611 (2004). See Littles v. Commissioner of Correction, 444 Mass. 871, 878 (2005) ("if there is no material change in circumstances, a judge is not obliged to reconsider a case, issue, or question of law after it has been decided"). Much of the additional evidence and argument also related to law and practice in California, not Massachusetts. Nonetheless, the second judge considered and rejected the argument, concluding that it oversimplified the basis of his decision and did not change his essential

reasoning. Most importantly, there was no plain error of fact or law in the original ruling, as the judge's reading of the statute was correct.

c. Class certification. The plaintiffs moved for class certification pursuant to G. L. c. 93A, § 9, and Mass. R. Civ. P. 23.[8] The motion was not opposed. The only dispute was whether to require an opt-in class. After a hearing, the motion for class certification was allowed. The class certification judge then provided for a sixty-day notice period. The judge ruled that "[s]aid notice shall inform potential class members that they must act affirmatively in order to 'opt into' the class." The decision to certify a class was correct. Requiring class members to opt in was not.

"With respect to both rule 23 and G. L. c. 93A, we review a grant or denial of class certification for an abuse of discretion." Bellermann v. Fitchburg Gas & Elec. Light Co., 470 Mass. 43, 51 (2014), citing Salvas v. Wal-Mart Stores, Inc., 452 Mass. 337, 361 (2008), and Moelis v. Berkshire Life Ins. Co., 451 Mass. 483, 486 (2008). Although the standards for class certification under rule 23 and G. L. c. 93A differ, class

[8] Rule 23 of the Massachusetts Rules of Civil Procedure governs class action procedures in Massachusetts generally. General Laws c. 93A, § 9, provides additional guidance on class actions in the consumer protection context.

certification was not opposed here, and regardless, the standards for class certification under either rule 23 or G. L. c. 93A are satisfied.[9] Class certification was appropriate. The class certification judge erred, however, in requiring the plaintiffs to opt into the class, and in defining the class as resident owners.

This court previously addressed the issue of opt-in classes in Sullivan v. First Mass. Fin. Corp., 409 Mass. 783 (1991). In that case, the trial court judge ruled that those "who wished to join the class that he had certified could do so only by affirmatively opting to join it." Id. at 789. We rejected this requirement, explaining, "Massachusetts law does not allow an 'opt in' class any more than it allows an 'opt out' class." Id. at 790. See Fletcher v. Cape Cod Gas Co., 394 Mass. 595, 602

[9] "[T]he requirements for class certification under the statutory class action provision in [G. L. c. 93A, § 9 (2),] are easier to satisfy than under Mass. R. Civ. P. 23." Feeney v. Dell Inc., 454 Mass. 192, 201 (2009). See Aspinall v. Philip Morris Cos., 442 Mass. 381, 391-392 (2004) ("similarly situated" and "similar injury" requirements of G. L. c. 93A should not be equated with rule 23 [a]'s similarity requirements, where reading "traditional technicalities" into statute would "impede the accomplishment of substantial justice" [citation omitted]); Baldassari v. Public Fin. Trust, 369 Mass. 33, 40 (1975) (G. L. c. 93A omits rule 23 requirements that "common questions 'predominate' over individual questions and that the class action be 'superior' to other available methods"). Here, the plaintiffs satisfy even the stricter requirements of rule 23, as their claimed injuries are nearly identical, center on a single question of law, and are most effectively dealt with through a class action. See Mass. R. Civ. P. 23 (a), (b).

(1985) ("There are no provisions in our rule 23 or [G. L. c. 93A, § 9 (2),] which would permit a judge to allow individual parties to 'opt out' of a class action"). The class certification judge therefore committed an error of law by requiring that plaintiffs opt in before certifying the class or finding liability.[10]

The reasons for not requiring opt-in classes have been well explained by the Federal courts as they considered changes to Fed. R. Civ. P. 23.[11] Those with small claims may often lack the financial incentive or legal understanding to opt in. As the United States Supreme Court stated: "Requiring a plaintiff to affirmatively request inclusion would probably impede the prosecution of those class actions involving an aggregation of small individual claims, where a large number of claims are required to make it economical to bring suit. . . . The plaintiff's claim may be so small, or the plaintiff so unfamiliar with the law, that he would not file suit individually, nor would he affirmatively request inclusion in

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[10] In the case before us, no plaintiffs opted out of the class. We therefore address only the prohibition of opt-in classes. We do not address here the prohibition of "opt-out" classes, which may raise different issues regarding the binding effects of class actions on members.

[11] Rule 23 of the Federal Rules of Civil Procedure was originally enacted in 1938 and amended in 1966.

the class if such a request were required by the Constitution." Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812-813 (1985).

Indeed, we can trace this reasoning back to the Reporter of Fed. R. Civ. P. 23, Benjamin Kaplan, who would later serve on this court. He wrote in an often-cited article: "[R]equiring the individuals affirmatively to request inclusion in the lawsuit would result in freezing out the claims of people -- especially [those with] small claims . . . -- who for one reason or another, ignorance, timidity, unfamiliarity with business or legal matters, will simply not take the affirmative step." Kaplan, Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I), 81 Harv. L. Rev. 356, 397-398 (1967).[12,13] We agree with this reasoning and stress

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[12] This specific reasoning has been cited in multiple Federal and State cases. See, e.g., Phillips Petroleum Co., 472 U.S. at 813 n.4; Kern v. Siemens Corp., 393 F.3d 120, 124 (2d Cir. 2004), cert. denied, 544 U.S. 1034 (2005); Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1557 (11th Cir.), cert. denied, 479 U.S. 883 (1986); Kleiner v. First Nat'l Bank of Atlanta, 751 F.2d 1193, 1201 n.18 (11th Cir. 1985); Robinson v. Union Carbide Corp., 544 F.2d 1258, 1262 (5th Cir.), cert. denied, 434 U.S. 822 (1977) (Wisdom, J., concurring); Hypertouch, Inc. v. Superior Court, 128 Cal. App. 4th 1527, 1548 (2005); Hale v. Wal-Mart Stores, Inc., 231 S.W.3d 215, 231 (Mo. Ct. App. 2007).

[13] Kaplan's article reviews the 1966 amendments of the Federal Rules of Civil Procedure. Prior to these amendments, Federal courts consistently applied an opt-in requirement to class actions, although no such requirement was explicit in the previous version. See Note, Opt-in Class Actions Under the FLSA, EPA, and ADEA: What Does It Mean to Be "Similarly Situated"?, 38 Suffolk U. L. Rev. 95, 96 (2004) (discussing

its importance particularly in consumer class actions brought pursuant to G. L. c. 93A.

General Laws c. 93A reflects "a strong public policy in favor of the aggregation of small consumer protection claims," so that harmful practices are litigated and corrected even where individual plaintiffs might not be incentivized to take action. Feeney v. Dell Inc., 454 Mass. 192, 201–203 (2009). Requiring opt-in classes would weaken the consumer protection statute's ability to deter those in violation of the statute by constraining class participation and limiting liability, and thereby "impede the accomplishment of substantial justice," particularly with regard to consumers who may lack the financial

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practice of upholding opt-in classes under 1938 rule); Spahn, Resurrecting the Spurious Class: Opting-in to the Age Discrimination in Employment Act and the Equal Pay Act through the Fair Labor Standards Act, 71 Geo. L.J. 119, 127-131 (1982) (discussing de facto opt-in requirements of certain class action suits under 1938 rule). When drafting the amended rules, "[t]he Advisory Committee specifically rejected the practice of forcing absent class members to opt into a [Fed. R. Civ. P.] 23 class action to secure its benefits." Cox, 784 F.2d at 1557. Multiple Federal courts have since held that, in light of the clear difference between the amended Fed. R. Civ. P. 23 and Federal statutes that do explicitly require opt-in classes, opt-in classes are impermissible under the modern Federal rule 23. See, e.g., Ackal v. Centennial Beauregard Cellular, L.L.C., 700 F.3d 212, 216 (5th Cir. 2012); Kern, 393 F.3d at 126. General Laws c. 93A, § 9 (2), and Mass. R. Civ. P. 23 were each "written in the light of" Fed. R. Civ. P. 23, after courts had ceased to require and begun to deny opt-in classes. Baldassari, 369 Mass. at 40. We do note, however, that this interpretation of the Federal rule is not unanimous. Kyriazi v. Western Elec. Co., 647 F.2d 388, 394-395 (3d Cir. 1981) (holding that judge did not abuse his discretion by certifying opt-in class).

incentive or legal understanding to opt into a class. Baldassari v. Public Fin. Trust, 369 Mass. 33, 40-41 (1975). The result of the opt-in requirement in this case was to leave a number of potential class members who were damaged by the defendants' actions without compensation. We hold that G. L. c. 93A, § 9 (2), and Mass. R. Civ. P. 23 do not permit a judge to require that plaintiffs opt into a class.[14]

We also modify the class certified to reflect the relevant statutory considerations. Section 32L (2) is directed at unfair changes in rent for lots that are similar. As explained above, the time of entry into lot rental agreements does not justify dissimilar rent for similar lots. In light of this reading of the statute, the correct class to certify in the instant case was those who paid rent on lots where the lease agreements tied to those lots began after the defendants took over the community.

[14] Massachusetts law forbidding the requirement of opt-in classes before liability is established does not preclude a judge from fashioning practical orders that require class members to take responsive action in order to be compensated after liability has been found. General Laws c. 93A, § 9 (2), provides a judge with discretion to fashion notice of an action to unnamed petitioners "in the most effective practicable manner," and to provide "notice of any proposed dismissal, settlement, or compromise" to all class members "in such manner as the court directs." Rule 23 (e) gives the judge discretion to promulgate orders that "establish[] a process for identifying and compensating members of the class."

We read the statute, particularly its reference to residents, to provide broad protection for those unlawfully required to pay such rent. The members of the class need not own the manufactured housing unit, as appears to be the case in the class certification here. The statute makes no reference to unit ownership. Nor need they be tenants with formal lease arrangements. The statute's express reference to residents is, we conclude, meant to be broadly inclusive, as residents are protected from unlawful rent increases even if they have not entered into formal lot rental agreements with the operator.[15] In sum, the class includes all of those who paid rent on lots with lease agreements beginning after the change in ownership.

d. Damages. General Laws c. 140, § 32L (7), provides that "[f]ailure to comply with the provisions of [G. L. c. 140, §§ 32A-32S], inclusive, shall constitute an unfair or deceptive practice under the provisions of [G. L. c. 93A, § 2 (a)]. Enforcement of compliance and actions for damages shall be in accordance with the applicable provisions of [G. L. c. 93A, §§ 4-10]." Because the defendants have violated G. L. c. 140, § 32L (2), damages are governed by G. L. c. 93A.

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[15] This reading of § 32L does not exclude from recovery nonresident tenants who did not pass on the cost of the additional lot rent to subtenants. The statute's use of the term "resident" is meant to be inclusive, not exclusive, providing as much protection as possible to those who bear the actual burden of unfair rent changes.

The plaintiffs have brought an action under G. L. c. 93A, § 9, which states that any person "who has been injured" by a violation of G. L. c. 93A, § 2, may bring an action for damages, and that "if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater." G. L. c. 93A, § 9 (1), (3).

The second Housing Court judge divided the plaintiffs into five separate subclasses for the determination of damages based on multiple factors, including whether they opted into the class, whether they owned the manufactured housing unit, whether they were cohabitants of the unit, whether they subleased the unit, whether they failed to testify, and whether the statute of limitations had expired. We reverse and remand the damages classifications for the reasons stated infra.

As discussed above, class certification was appropriate but the requirement that plaintiffs opt into the class was improper. Therefore, injured plaintiffs who were excluded on the basis of their failure to opt in were improperly denied damages.[16] Section 32L (2) is also not concerned with ownership of the

[16] Requiring class members to take positive action, such as testifying, to remain in the suit was also problematic. See Cox, 784 F.2d at 1556-1557 (dismissing passive plaintiffs for not complying with discovery order is functionally opt-in device contrary to Fed. R. Civ. P. 23). Testimony may be necessary for allocation of damages, but should not have served as a basis for disqualification from the class.

manufactured housing unit, the number of people living in the unit, or intrafamily arrangements unrelated to rent payments. Classifications based on those considerations were improper.

Every month since the defendants took ownership of the property, someone has paid an additional ninety-six dollars on lots leased after the change in ownership. Those who have paid the additional ninety-six dollars per month for those lots have been injured and are entitled to compensation pursuant to G. L. c. 93A.[17] Payment information should be readily available to the defendants, as they signed the lot rental agreements and received the lot rental payment.[18] Nonetheless, some additional

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[17] Although under G. L. c. 260, § 5A, the statute of limitations for G. L. c. 93A actions is generally four years, the parties do not dispute that the defendants' violation of G. L. c. 140, § 32L (2), is a contract action and therefore has a six-year statute of limitations under G. L. c. 260, § 2. See Calimlim v. Foreign Car Ctr., Inc., 392 Mass. 228, 236 (1984), quoting Linthicum v. Archambault, 379 Mass. 381, 383 (1979) ("recovery under the Consumer Protection Act should be 'in addition to, and not an alternative to, traditional tort and contract remedies'"). Therefore, no damages can be recovered for the months in which the plaintiffs paid excess lot rent more than six years prior to the filing of the complaint.

[18] In their cross appeal, the plaintiffs argue that the second Housing Court judge erred when he did not allow the defendants' response to a particular interrogatory in evidence at trial. That interrogatory required one of the defendants to identify every tenant that became a tenant after the defendants' acquisition of the manufactured home community. In their response, the defendants incorporated the response to a request for production of documents, a rent roll listing a single name for each unit in the community that corresponded with the interrogatory. Insofar as this answer provides information with

fact finding may be required to determine who was actually injured by the requirement of paying an additional ninety-six dollars per month for each lot. This may not be clear if, for example, there were lot subleases, or other allocations of responsibilities for lot rental payments within each lot.[19] Where residents are bearing the cost of dissimilar rent, § 32L provides protection even when the residents are not signatories to the lot rental agreements. A remand for recalculation and reallocation of damages is required, as a number of the factors considered and requirements imposed by the second judge in determining damages were incorrect.

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regards to the lot rental agreements and lot rent, the court may consider it, and other evidence of rental payments, upon remand.

[19] As explained above, § 32L was designed to provide broad protection. Residents were protected by the statute, not just tenants with formal lease arrangements. Nothing in G. L. c. 93A precludes such protection. With regard to subtenants, we note that the absence of privity of contract does not necessarily bar a claim under G. L. c. 93A, particularly if the parties can show that they "engaged in more than a minor or insignificant business relationship," for example, a formal assignment of lot rent responsibilities. Standard Register Co. v. Bolton-Emerson, Inc., 38 Mass. App. Ct. 545, 551 (1995). We have previously held that G. L. c. 93A is protective of third-party rights, even in the absence of privity. See Rawan, 483 Mass. at 669 (noting that 1979 amendments to G. L. c. 93A and subsequent case law were "clear affirmations of third-party rights" [citation omitted]). Recovery by subtenants who can show that they bore the cost of increased lot rent is consistent with both G. L. c. 93A's concern for consumers and the act's concern for low income residents.

e. Attorney's fees. A decision regarding attorney's fees is reviewed for an abuse of discretion. Gyulakian v. Lexus of Watertown, Inc., 475 Mass. 290, 305 n.24 (2016), quoting Fontaine v. Ebtec Corp., 415 Mass. 309, 324 (1993).

The defendants oppose the awarding of attorney's fees for (1) preparation of a motion to compel depositions, when the depositions were mutually agreed upon; (2) work spent assessing damages that were ultimately rejected by the second judge; (3) time that was described in such a way that it was impossible to attribute that time to any particular task; and (4) trial time, which the defendants claim was excessive because the plaintiffs could have subpoenaed records to shorten the time for trial.

An award of attorney's fees "is largely discretionary with the [trial] judge, who is in the best position to determine how much time was reasonably spent on a case, and the fair value of the attorney's services." Fontaine, 415 Mass. at 324. Further, the determination of reasonable attorney's fees and costs is a multifactor assessment of "the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases." Berman v. Linnane, 434 Mass. 301, 303

(2001), quoting Linthicum v. Archambault, 379 Mass. 381, 388-389 (1979).

Here, the plaintiffs initially requested attorney's fees and costs of $104,850.30. After a hearing, the second judge issued a written decision with detailed findings that reduced the requested award by $17,050 to $87,800.30. The defendants have provided no information in their brief that is sufficient to discern any abuse of discretion by the judge, particularly given that he has already taken note of the defendants' arguments and reduced the award of attorney's fees.

3. Conclusion. For the foregoing reasons, we affirm the determination that time of entry into a lot rental agreement does not render the renters dissimilar under G. L. c. 140, § 32L (2), and thus the requirement that renters pay ninety-six dollars per month in additional rent for essentially the same lots was a violation of the statute. We also affirm the decision to certify a class, but we reverse and remand to the Housing Court the class certification decisions, as the initial class definition requires further clarification and the subclasses created for the purposes of allocation of damages were erroneous.

So ordered.