


<b>CLERK'S NOTICE</b>	DOCKET NUMBER <b>1781CV02178</b>	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b> 
CASE NAME: Maria Fenn Personal Representative for the Estate of Zelma Kosiavelon vs. The Main Street America Group et al		Michael A. Sullivan, Clerk of Court Middlesex County
TO: Courtney Elizabeth Mayo, Esq. Hassett and Donnelly, P.C. 446 Main St 12th Floor Worcester, MA 01608		COURT NAME & ADDRESS Middlesex Superior - Lowell 370 Jackson Street Lowell, MA 01852
<p style="text-align: center;">You are hereby notified that on 02/23/2022 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to (#109.3): Alter and Amend Judgment DENIED          EXPANDED ENDORSEMENT on plaintiff's motion to alter and amend judgment, pursuant to Mass. R. Civ. P. 59(e) (Paper #109.3). The Court entered judgment on August 26, 2021, and plaintiff seeks, essentially, to have the Court issue a separate ruling as to the plaintiff's G. L. c. 93A claims. The court held a hearing via video teleconference on September 29, 2021. After careful review and consideration of the present pleadings; oral arguments; the pre-trial motions and rulings; trial testimony; jury instructions; the plaintiff's own Special Verdict Slip, which the court adopted; the jury verdict; relevant case law; and G. L. c. 93A and Rule 59, the motion is DENIED, and the request for rulings is also DENIED.</p> <p>The plaintiff's claims initially stemmed from a property damage claim to the decedent Zelma Kosiavelon's home in Dracut, Massachusetts, and the defendants' claims handling processes, which the plaintiff alleged were the cause of Zelma Kosiavelon's death. As a result, Maria Fenn, as Personal Representative of the Estate of Zelma Kosiavelon, brought claims for negligence, wrongful death, and violations of G. L. c. 93A and 176D. The claims were tried by a jury between August 16 and August 25, 2021. The plaintiff's proposed Special Verdict Slip was adopted/accepted by agreement by the defendant and the Court and was submitted to the jury for consideration following closing arguments. The jury returned a verdict on August 26, 2021, finding no negligence or wrongful death, but answered "yes" on the violation of G. L. c. 93A and 176D.</p> <p>Plaintiff now seeks to have this Court amend or alter the judgment pursuant to Rule 59(e) by finding error in the judgment or alternatively finding there was an erroneous judgment lacking in legal or factual justification. See Phantom Gourmet, Inc. v. Choice Cards, Inc. 91 Mass. App. Ct. 1105 (2017) and Geneva Furniture IV, LLC v. Brickpoint Props., 90 Mass. App. Ct. 1122 (2016), respectively. I find neither. The trial and pre-trial motion process was vigorously pled, and the jury was presented with and considered all claims tried. At no time did any party to the litigation request or even suggest the claims relating to G. L. c. 93A and/or 176D be addressed by the Court through the process of written findings of fact and rulings of law.</p> <p>To recover under G. L. c. 93A, § 9, a plaintiff must establish that (1) the defendant committed an unfair or deceptive act or practice; (2) injury or loss; and (3) a causal connection between the injury suffered and the defendant's unfair or deceptive act or practice. Herman v. Admit One Ticket Agency LLC, 454 Mass. 611, 615-616 (2009), citing Hershenow v. Enterprise Rent-A-Car Co. of Boston, Inc., 445 Mass. 790, 797 (2006). If the court finds for the plaintiff, "recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater." G. L. c. 93A, § 9(3). Therefore, a plaintiff who has established some causation of injury is guaranteed recovery of at least nominal damages of \$25.00. Lord v. Commercial Union Ins. Co., 60 Mass. App. Ct. 309, 322 (2004). Further, a prevailing plaintiff "shall" be awarded reasonable attorney's fees and costs. G. L. c. 93A, § 9(4). Based on the jury's verdict and the evidence as presented at trial, I do not find the plaintiff established some, or any, causation and therefore, overturning, amending and/or altering the judgment in the present case is not warranted.</p> <p><b>SO ORDERED.</b></p>		
DATE ISSUED 02/23/2022	ASSOCIATE JUSTICE/ ASSISTANT CLERK <b>Camille Sarrouf</b>	SESSION PHONE#