



Contracting Parties May Not Waive Liability for Willful or Knowing Violations of Chapter 93A

The Massachusetts Supreme Judicial Court (“SJC”) recently clarified the law with respect to a commercial party’s ability to contractually exempt itself from liability under Chapter 93A. In *H1 Lincoln, Inc. v. South Washington Street, LLC, et al.*, the Superior Court had found that defendants’ conduct toward plaintiff tenant in connection with a commercial lease violated Chapter 93A. On appeal, defendants alleged that they could not be held liable under that statute in light of a provision in the lease that immunized defendants from any “speculative or consequential damages.”

The SJC held that limitation of liability provisions will not be enforced to protect defendants who willfully or knowingly engage in unfair or deceptive conduct. In the course of its decision, the SJC declined to follow the distinction developed by the Appeals Court between contract and tort-based Chapter 93A claims. The court explained that Chapter 93A claims are “difficult to pigeonhole into discrete tort or contract categories.” Instead, the SJC refocused its analysis on the policies underlying the statute and stated that the Legislature “intended to deter and severely punish – not to condone – defendants who willfully or knowingly engaged in unfair or deceptive acts.” Therefore, enforcing a limitation of liability provision that would allow a defendant to “immunize itself in advance” from liability for willful violations of Chapter 93A “would do violence to the public policy protected by the statute.”

It should be noted that the SJC’s holding appears limited to willful or knowing violations of Chapter 93A. In a footnote, the SJC stated that “[e]nforcement of limitation of liability provisions for . . . relatively innocent violations of the statute does not raise the same public policy concerns as would enforcement of liability waivers for willful or knowing violations.”

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