



FEATURED DECISIONS:

Commonwealth of Massachusetts v. Hometap Equity Partners, LLC

C.A. No. 2584CV00469-BLS2 (Dec. 19, 2025) (Squires-Lee, J.)

Defendants Not Entitled to Assert Equitable Affirmative Defenses Against Commonwealth Where Doing So Would Frustrate Public Policy

The Commonwealth brought suit under G.L. c. 93A, § 4 against Hometap Equity Partners, LLC and Hometap Management Holdings, LLC (together, “Hometap”) alleging that Hometap’s Home Equity Investment (“HEI”) product is an illegal and deceptive mortgage that violates the criminal usury statute. The court allowed the Commonwealth’s motion to strike Hometap’s equitable affirmative defenses of estoppel and unclean hands.

The Commonwealth argued that Hometap’s HEIs were unlawful, oppressive, and unconscionable. In its answer, Hometap asserted, among other defenses, estoppel and unclean hands, contending that, beginning in 2018, it had met with representatives of the Attorney General’s Office and the Division of Banks (“DOB”), explained its product, and received no indication that the HEI was unlawful. Hometap argued that the Commonwealth’s present position was inconsistent with the DOB’s earlier statements that shared equity products were distinct from loans and outside its licensing authority.

Treating the motion to strike under Mass. R. Civ. P. 12(f) as analogous to a Rule 12(b)(6) motion, the court accepted Hometap’s factual assertions as true but concluded that the equitable defenses were legally unavailable as a matter of law. As to estoppel, the court held that equitable estoppel may not be applied against

the government where doing so would frustrate public policy intended to protect the public interest. The court reasoned that permitting estoppel here would impede the Commonwealth’s ability to enforce c. 93A. An enforcement action under § 4 is essentially a public interest proceeding, and allowing regulated entities to insulate themselves from future enforcement based on preliminary meetings or the absence of earlier objections would significantly harm consumer protections. The court emphasized that c. 93A is designed to be flexible and responsive to evolving business practices, and that binding the Attorney General to initial assessments or inaction would undermine the statute’s purpose and potentially constrain future administrations.

The court likewise struck the unclean hands defense. Drawing on both Massachusetts precedent and federal authority recognizing a public policy exception to analogous equitable doctrines, the court concluded that when the government acts in the public interest to enforce consumer protection laws, the unclean hands doctrine is unavailable if its application would frustrate that enforcement. Should the Commonwealth prove that Hometap’s product is illegal or deceptive, barring relief based on alleged prior governmental inaction would contravene the public policy embodied in c. 93A. ■

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MCR Labs, LLC v. Analytics Labs, LLC*2025 Mass. Super. LEXIS 935, C.A. No. 2584CV00260-BLS2 (Oct. 21, 2025) (Squires-Lee, J.)*

Unfair Competition Claim Under Chapter 93A Does Not Require Proof of Commercial Transaction Between Parties

MCR Labs, LLC (“MCR”), a cannabis testing laboratory, sued several competing laboratories, alleging that they inflated reported THC potency levels and suppressed contamination failures in order to attract cannabis cultivators and increase market share. MCR asserted claims under G.L. c. 93A, § 11, for unfair methods of competition, as well as tortious interference with business relations and unjust enrichment. The complaint alleged that when cultivators switched from MCR to defendants, reported THCa levels rose and mold or yeast failure rates dropped. MCR contended that these changes were statistically implausible absent manipulation. MCR further alleged that this conduct diverted customers away from MCR.

All defendants moved to dismiss under Rule 12(b)(6), and several defendants also challenged venue. The court denied the motion to dismiss the Chapter 93A claim and allowed it as to the tortious interference and unjust enrichment claims. The court held that MCR plausibly alleged unfair methods of competition.

The court stated that, while claims based on “unfair or deceptive acts or practices” generally require a commercial transaction between the parties, claims based on unfair methods of competition do not. The court also rejected defendants’ argument that the claim sounded in fraud and therefore required particularized pleading under Rule 9(b), reasoning that Chapter 93A liability extends beyond common-law fraud.

The court dismissed the tortious interference claim, however, because MCR did not allege that defendants knew of and intentionally targeted specific business relationships between MCR and particular customers. Allegations of generalized competitive harm and customer migration were insufficient.

The court also dismissed the unjust enrichment claim. MCR did not confer a benefit on defendants merely by its own alleged compliance with regulatory obligations, and defendants’ alleged gain in market share did not constitute retention of a benefit belonging to MCR. In addition, the court stated that Chapter 93A provided an adequate legal remedy. ■

Zemcar Inc. v. Uber Technologies, Inc.*2025 Mass. Super. LEXIS 936, C.A. No. 2484CV01525-BLS2 (Oct. 20, 2025) (Squires-Lee, J.)*

Discovery Stayed Pending More Particularized Identification of Trade Secrets

Plaintiff Zemcar Inc., d/b/a Grip Mobility Co. (“Grip”) alleged that Uber Technologies, Inc. (“Uber”) misappropriated trade secrets relating to Grip’s software applications following a two-year pilot program between the companies. Grip moved to compel Uber to produce trade secret discovery, and Uber moved for a protective order staying such discovery on the ground that Grip’s trade secret disclosure was insufficient under the Massachusetts Uniform Trade Secret Act (“MUTSA”), G.L. c. 93, § 42D(b).

MUTSA requires a plaintiff alleging trade secret misappropriation to identify the trade secrets with reasonable particularity before commencing discovery relating to those secrets, so that the court can determine appropriate discovery parameters and the defendant can prepare its defense. The court emphasized that this requirement prevents a plaintiff, particularly a competitor, from using discovery to rummage through a defendant’s confidential materials without first clearly defining the alleged secrets.

continued on page 3

continued from page 2

Grip's complaint had broadly described its trade secrets as including technical specifications, test results, data compilations, engineering techniques, optimized Android Package Kits, encryption methods, audio-visual encodings, and other technical aspects of its Android, iOS, and web technologies. However, the trade secret list it later provided largely described the functionality of the applications rather than identifying the specific underlying code, technical specifications, or proprietary processes alleged to constitute trade secrets. The court concluded that, except in one limited respect, the disclosure did not sufficiently identify the particular technical aspects at issue.

Although Grip argued that Uber knew what it had received during the parties' collaboration, the court

explained that the purpose of the trade secret list is not merely to notify the defendant, but to guide the scope of discovery and to define the claims for the finder of fact. A trade secret list must be detailed enough to distinguish the alleged secrets from information in the public domain. While Grip was not required to prove at this stage that the information constituted protectable trade secrets, it was required to articulate with specificity what it contended those secrets were.

Because Grip's disclosure was not sufficiently particular to determine the proper parameters of discovery, the court denied Grip's motion to compel and allowed Uber's motion for a protective order staying trade secret discovery. The court ordered Grip to serve a revised trade secret list within thirty days. ■

Stone v. Walgreens Boots Alliance, Inc.

C.A. No. 2584-CV-00898-BLS2 (Dec. 2025) (Squires-Lee, J.)

Arbitration Clause in Walgreens Clickwrap Agreement Deemed Enforceable

The plaintiffs filed a class action against Walgreens Boots Alliance, Inc. ("Walgreens") alleging that Walgreens sent them near-daily marketing emails and that the unsubscribe link in those emails was nonfunctional. They asserted claims for unjust enrichment and violations of G.L. c. 93A. Walgreens moved to compel arbitration based on arbitration provisions contained in its website and loyalty program Terms and Conditions. The court allowed Walgreens' motion to compel arbitration and stayed the putative class action, concluding that the plaintiffs had entered into enforceable clickwrap agreements requiring arbitration of their claims.

Each plaintiff had registered for a Walgreens website or loyalty account, and that registration required checking a box affirmatively stating agreement to the applicable "Terms and Conditions," which were hyperlinked and included binding arbitration provisions governed by the Federal Arbitration Act. None of the plaintiffs opted out of arbitration. Treating the motion as one for summary judgment, the court applied the SJC's 2024 decision in *Good v. Uber Technologies, Inc.*, which requires both reasonable notice of contract terms and a reasonable manifestation of assent. Because there was no evidence that the plaintiffs actually reviewed the

terms, the issue was whether the interface provided reasonable notice under the totality of the circumstances.

The court concluded that it did. Although signing up for a drugstore loyalty program would not necessarily lead a consumer to expect extensive contractual terms, the registration screens here were simple, uncluttered, and blocked further progress unless the user checked a box stating, "I am 16 or over and I accept myWalgreens Terms and Conditions." The phrase "myWalgreens Terms and Conditions" was hyperlinked, and the user could not complete registration without affirmatively checking the box. Under *Good*, such clickwrap agreements constitute enforceable contracts when the interface reasonably focuses the user's attention on the contractual nature of the transaction.

The plaintiffs' affidavits stating that they did not recall agreeing to arbitration or reviewing the terms were insufficient to create a genuine dispute. The test is objective, and un rebutted evidence established that acceptance of the Terms was a mandatory step in registration. The court held that a lack of memory cannot defeat enforcement of a valid clickwrap agreement. ■

Zhou v. Lin

C.A. No. 1884CV02607-BLS2 (Dec. 2025) (Squires-Lee, J.)

Post-Judgment Relief Denied Where New Evidence Did Not Exist at Time of Trial

Defendants Xinwei “Christine” Lin (“Lin”) and Jianxin “Steven” Gao (“Gao”) filed an emergency post-trial motion seeking discovery and a stay of judgment based on testimony Plaintiff May Zhou (“Zhou”) gave in a September 2025 criminal proceeding in China. The underlying civil case had already been tried over twenty-four days, after which the court found in Zhou’s favor on claims for breach of fiduciary duty, aiding and abetting, civil conspiracy, and defamation arising from her 2018 ouster as CEO and board member of KnowledgeLink Group, Inc. The court awarded Zhou \$3.52 million in damages and ordered her reinstatement to her executive and board positions. The court denied the motion.

Lin and Gao claimed that Zhou’s testimony in a criminal trial in China was inconsistent with her testimony in Massachusetts. They moved for discovery under Mass. R. Civ. P. 34 and to depose Zhou, arguing that her testimony constituted newly discovered evidence bearing on her credibility, their defenses, and the possibility of reinstatement. They also sought to stay entry of final judgment pending that discovery.

Applying the standard for post-judgment relief based on newly discovered evidence, the court held that the motion failed as a matter of law. To warrant relief, the evidence must have existed at the time of trial but have been undiscoverable through due diligence; must not be merely cumulative or impeaching; and must be of such a nature that it would likely change the result. The court concluded that Zhou’s China testimony, given nearly ten months after trial, did not qualify as “newly discovered evidence” because it did not exist at the time of trial. Post-trial events cannot satisfy Rule 59 or Rule 60 standards, even if they could not have been discovered earlier.

The court further determined that defendants’ asserted grounds were, at most, impeaching. Newly discovered impeachment evidence ordinarily does not justify a new trial, and the court saw nothing in the translated transcript suggesting intentional falsehood or fraud on the court. Nor did the testimony warrant reconsideration of the reinstatement order. The court rejected the notion that Zhou’s post-trial conduct could serve as a basis to relitigate equitable relief already granted. ■

Miller v. Murphy

C.A. No. 2484CV03366-BLS2 (Nov. 17, 2025) (Squires-Lee, J.)

Court Upholds Arbitration Appellate Decision That Awarded Millions to Minority Shareholder

The court denied a petition to vacate a JAMS appellate arbitration award that had reversed an arbitrator’s decision and awarded substantial damages to Darlene Murphy (“Murphy”) on her claim for breach of fiduciary duty arising out of her minority ownership in Wellesley Asset Management, Inc. (“WAM”). The petitioners, Greg Miller and Michael Miller (together, the “Millers”) and WAM sought to vacate the JAMS appellate panel’s final award and to

confirm the original arbitrator’s decision; Murphy moved to dismiss the petition.

Murphy and Greg Miller had co-founded WAM and were engaged in a long-term romantic relationship while she served as a director, officer, and ultimately a 20% shareholder. After their relationship ended in 2019, Murphy was removed from management, placed on leave, and ultimately terminated as president, though she retained her ownership interest. Her compensation

continued from page 4

was progressively reduced and ultimately eliminated after Greg and his son Michael, who together controlled a majority interest, voted to reduce the board to two members and remove her as a director.

Following a nine-day hearing, the arbitrator rejected Murphy's fiduciary duty and freeze-out claims, concluding that, as an at-will employee, she could be terminated, that the Millers had not acted with improper motive, that compensation decisions were reasonable by industry standards, and that her ownership interest had not been diluted. Murphy appealed to a three-member JAMS appellate panel. The panel majority accepted the arbitrator's findings of fact but concluded that he had applied the wrong legal standard. Relying on Massachusetts close-corporation precedent, the panel held that the proper inquiry was whether the majority frustrated Murphy's reasonable expectations as a minority shareholder. Applying that framework, the panel found that the Millers'

progressive removal of Murphy's role and compensation constituted a breach of fiduciary duty. The panel awarded Murphy nearly \$3 million in back pay and bonuses plus statutory interest and ordered prospective annual payments until the company is sold.

The court held that the petitioners failed to establish any statutory basis to vacate the award under G.L. c. 251. Judicial review of arbitration awards is extremely limited, and courts may not review the merits of the arbitrators' legal or factual conclusions. The court rejected the Millers' arguments that the panel was biased, exceeded its authority, or violated JAMS procedures, noting that the rules expressly allow majority decisions and that disagreement with the panel's legal analysis does not justify vacatur. Because the petition alleged no facts that would satisfy any statutory ground for vacating the award, the court denied the application to vacate and allowed Murphy's motion to dismiss. ■

Capron Lighting and Sound Co., Inc. v. Vollmuth

C.A. No. 2584CV00377 (Dec. 15, 2025) (Squires-Lee, J.)

Trade Secret Claim Failed Where Trade Secret Not Identified with Reasonable Particularity

Plaintiff Capron Lighting and Sound Co., Inc. ("Capron") sought leave to file a second amended complaint. Capron alleged that Defendant Bett Vollmuth ("Vollmuth"), a longtime senior executive, downloaded and removed "Job Files" containing customer information, pricing, and project information before leaving to join Element Experiential, LLC ("Element"), which then underbid Capron on major public events. Capron sought to add Element to its trade secret, tortious interference, conversion, and c. 93A claims, and to add claims against Vollmuth for breach of the implied covenant of good faith and fair dealing, unjust enrichment, and c. 93A. The court allowed in part and denied in part Capron's motion.

The court held that the proposed trade secret claims against Element failed because Capron did not identify any trade secret with reasonable particularity. The sweeping description of "Job Files" amounted to generalized business information, much of which appeared publicly known or readily ascertainable in the industry. The complaint also failed to allege

reasonable efforts to maintain secrecy, such as confidentiality agreements, or facts showing that Element knew that any information was confidential or used improper means to obtain it. For similar reasons, the court deemed the tortious interference, conversion, and c. 93A claims against Element to be speculative and insufficient, as the allegations reflected ordinary market competition rather than unlawful conduct.

The court also denied the proposed claims against Vollmuth for breach of the implied covenant and unjust enrichment. Vollmuth was an at-will employee with no alleged employment contract, and the implied covenant requires the existence of a contractual relationship. The unjust enrichment claim was redundant of the existing breach of loyalty claim.

The court allowed, however, the proposed c. 93A claim against Vollmuth. Although intra-enterprise disputes are generally outside c. 93A, a former employee's breach of the duty of loyalty that causes commercial harm can support a § 11 claim. ■

Motion to Compel Denied Where Plaintiff Waited Years to Pursue Enforcement of Subpoena

In November 2022, Plaintiff W. Hugo Van Vuuren (“Van Vuuren”) served subpoenas on four nonparty entities seeking eleven years of documents concerning his immigration status, the ownership and financial structure of the entities, and communications with the entities’ counsel. The entities timely objected in writing, asserted general and specific objections, and referred Van Vuuren to documents previously produced in related litigation. Van Vuuren took no action until June 2025, when his counsel sent a single email requesting a meet-and-confer, and then filed the motion to compel in September 2025 without further effort. The court denied with prejudice the plaintiff’s motion to compel.

The court exercised its discretion to deny the motion based on undue delay, failure to comply with Superior Court Rule 9C, and the facial overbreadth and

burden of the subpoenas. Relying on longstanding authority permitting denial of discovery for dilatory conduct, the court emphasized that Rule 45 imposes special obligations to avoid undue burden on nonparties. The delay prejudiced the entities, which had reasonably assumed the matter resolved and lost the opportunity to timely move to quash or seek protective relief.

The court also found that Van Vuuren failed to satisfy Rule 9C’s meet-and-confer requirement. A single email did not constitute a good faith effort to confer by telephone or in person, and the motion’s certification did not demonstrate reasonable efforts to narrow the dispute.

The court also concluded that the subpoenas were overly broad and unduly burdensome because they sought eleven years of documents and included wide-ranging requests unrelated to the pending claims. ■

Termination of At-Will Employee Without Cause to Avoid Paying Earned Commissions May Violate Implied Covenant of Good Faith and Fair Dealing

Former law firm associate Mark Cashman (“Cashman”) brought suit against his former firm and two partners following his termination in December 2021. Cashman alleged breach of contract and wrongful termination based on the implied covenant of good faith and fair dealing, retaliatory discharge under the Wage Act, violation of the Wage Act for unpaid commissions, and wrongful termination in violation of public policy. Defendants moved to dismiss, which the court allowed in part and denied in part.

Cashman’s 2017 employment agreement provided that he was an at-will employee paid a salary plus commissions once the firm had billed and collected a

specified annual threshold in fees. In November and December 2021, a newly hired partner informed Cashman that the firm intended to eliminate his commission structure and replace it with a fixed salary, allegedly to prevent him from earning more than partners. After Cashman protested and retained counsel, he was terminated effective immediately. Cashman alleged that at the time of his termination, he had generated approximately \$715,000 in fees for 2021 and that two of his cases settled shortly after his departure, entitling him to commissions exceeding \$1.5 million.

As to the breach of contract and wrongful termination claims, the court held that, although *continued on page 7*

continued from page 6

Cashman was an at-will employee and the agreement permitted changes to compensation, every contract includes an implied covenant of good faith and fair dealing. In the at-will context, that covenant prevents an employer from terminating an employee to avoid paying compensation that is clearly related to past services and “due or about to be due.” Accepting the allegations as true, the court concluded that Cashman plausibly alleged that he was fired to avoid paying commissions he had already substantially earned.

The court dismissed the Wage Act claim for unpaid commissions, however, because the commissions were contingent on the firm billing and collecting fees and therefore were not yet “due and payable” at the time of

termination. The retaliatory discharge claim under G.L. c. 149, § 148A, however, survived. The Wage Act prohibits retaliation against an employee for asserting rights under the statute, even if the underlying wage claim ultimately proves unsuccessful. The court held that Cashman plausibly alleged that he reasonably believed the firm was depriving him of commissions to which he was entitled and that he was terminated in response to his objections.

Finally, the court denied dismissal of the public policy wrongful termination claim, concluding that Cashman plausibly alleged that he was terminated after insisting the firm comply with ethical rules governing client notification and clients’ right to choose counsel. ■

Markel American Ins. Co. v. Procom Engineering, Inc.

C.A. No. 2484CV01074-BLS2 (Oct. 2025) (Squires-Lee, J.)

Pessimism About Settlement Prospects Did Not Excuse Compliance with Mandatory Mediation Provision in Contract

Markel American Insurance Co. (“Markel”), as subrogee of its insured, Joseph Donovan (“Donovan”), brought a ten-count complaint against Procom Engineering, Inc. d/b/a SeaPiper (“SeaPiper”) arising from an explosion that destroyed Donovan’s newly purchased SeaPiper 35 Trawler (the “Vessel”). The complaint alleged that two days after delivery of the vessel, Donovan opened the propane tank valve and lit the stove, at which point an explosion caused catastrophic damage rendering the Vessel a total loss. Markel alleged that loose connections in the propane stove unit caused the explosion and that SeaPiper failed to exercise reasonable care in design, assembly, inspection, and warnings. Markel further alleged that SeaPiper breached contractual and warranty obligations by delivering a Vessel with a latent defect in the propane system that rendered it unmerchantable and unfit for its intended use.

Markel asserted negligence, breach of contract, breach of express and implied warranties, and a G.L. c. 93A claim against SeaPiper and its principal, Wesley Zhou (“Zhou”) (on a veil-piercing theory). SeaPiper moved to dismiss or, alternatively, for a more definite statement.

As to Zhou, the court concluded that the amended complaint failed to state a viable claim for piercing the

corporate veil. Massachusetts law permits veil piercing only in rare circumstances to prevent gross inequity. Markel recited, on information and belief, the familiar veil-piercing factors identified in Massachusetts case law, but it alleged no specific, nonconclusory facts supporting those factors. The court explained that merely parroting the elements, such as thin capitalization, intermingling of assets, or use of the corporation to promote fraud, was insufficient under the plausibility standard.

With respect to SeaPiper, the company argued that the action should be dismissed because the parties’ sale agreement required mediation of disputes in California. The court held that the mediation provision was mandatory but not a condition precedent to suit. Markel argued that mediation would be futile due to SeaPiper’s financial distress and a low pre-suit settlement offer. The court rejected that argument, explaining that futility is a narrow exception generally requiring impossibility of performance, and that financial hardship or pessimism about settlement prospects does not excuse contractual compliance. Rather than dismiss the claims against SeaPiper, the court stayed the action and ordered the parties to proceed to mediation within forty-five days, concluding that this approach best conserved judicial and party resources. ■

Ababio v. Nike Retail Services, Inc.

2025 Mass. Super. LEXIS 1529, C.A. No. 2584CV01134-BLS-1 (Nov. 25, 2025) (Barry-Smith, J.)

Job Applicants Not Subjected to Lie Detector Tests Lacked Standing to Sue Under G.L. c. 149, § 19B(2)(b)

The plaintiffs applied for jobs with several Massachusetts employers using application forms that allegedly omitted the notice required by § 19B(2)(b), which informs applicants that employers may not require lie detector tests. None of the defendants actually used lie detector tests, and none of the plaintiffs alleged that they were ever subjected to one. The plaintiffs nevertheless brought class actions seeking statutory damages of at least \$500 per violation under § 19B(4). The defendants moved to dismiss for lack of standing, contending that plaintiffs did not qualify as “persons aggrieved” under G.L. c. 149, § 19B. The court allowed the defendants’ motion to dismiss.

The court first rejected the defendants’ argument that the statute authorizes civil actions only for the use

of lie detector tests, concluding that § 19B(4)’s reference to violations of subsection (2) includes the notice requirement in § 19B(2)(b). However, the court held that plaintiffs still lacked standing because the statute limits civil actions to a “person aggrieved,” a term consistently interpreted across Massachusetts statutes to require a non-speculative harm that is more than minimal or technical.

The court concluded that a plaintiff must show an infringement of legal rights that results in a concrete, appreciable injury within the statute’s zone of concern. Although the plaintiffs identified a technical violation in the failure to receive the required disclosure, they did not suffer any actual or appreciable harm. ■



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