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Court broadly interprets coercion element of MCRA

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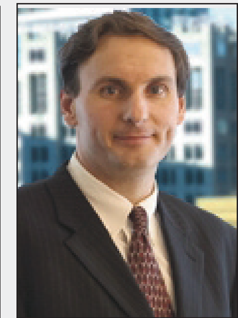
BLOG OF THE WEEK

By Vincent J. Pisegna and Anthony J. Cichello

Vincent Pisegna


Tony Cichello

In the recent case *Wodinsky v. Kettenbach*, Mass. App. Ct. No. 13-P-170 (Jan. 6, 2015), the Appeals Court issued a decision expansively construing the Massachusetts Civil Rights Act, G.L.c. 12, §11H, but once again reinforcing that purely private conduct, even if undertaken by or through a corporate entity (in this case a holder of property), will not be sufficient to establish that a party is "engaged in trade or commerce" for purposes of establishing liability under G.L.c. 93A.

Wodinsky is notable for the underlying egregious conduct of the defendant Kettenbach parties, wealthy condominium owners who were found to have undertaken a campaign to drive out other unit owners in their effort to secure the entire building for use as their home.

This campaign included taking steps to control and manipulate the condominium board, failing to conduct proper board meetings or votes, imposing excessive assessments on unit owners to finance unnecessary or extravagant renovations or repairs, improperly waiving condominium fees due from unit owners who agreed to sell to the defendants and taking efforts to ensure that the only building elevator was condemned and decommissioned, requiring the Wodinskys, a couple who were 85 and 68 years of age, to walk up and down four flights of stairs in order to come and go from their unit, and leaving the plaintiff's 86-year-old brother, who lived with the couple, to remain house bound for many months until he died.

Litigation began after the defendants, on behalf of the condominium association, sued the Wodinskys. The Wodinskys countersued in a separate action that was later consolidated with the condominium fee dispute. After trial, the Wodinskys prevailed on claims against the defendants for violation of the MCRA, abuse of process and civil conspiracy.

Despite an advisory ruling by the jury in favor of the Wodinskys on the 93A claim, the trial judge entered judgment in favor of the defendants, finding that the Wodinskys were not "engaged in trade or commerce" with the meaning of G.L.c. 93A.

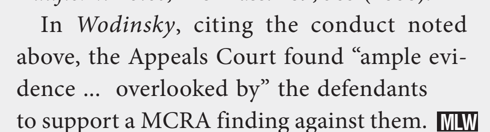
Addressing the 93A claim, the Appeals Court held that purely private conduct, even if undertaken by or through a corporate entity, such as was the case in *Wodinsky*, is not sufficient to establish that a party is "engaged in trade or commerce" for purposes of establishing liability under G.L.c. 93A.

In this case, the court found that, while reprehensible, the defendants' actions were undertaken for a personal, rather than a business, purpose.

The court upheld the MCRA verdict in favor of the Wodinskys, finding ample evidence that the defendants "coerced, intimidated, and threatened the Wodinskys in an effort to force them out of their home."

Massachusetts case law has generally required that in order to satisfy the "threats, intimidation, or coercion" prong of the MCRA, a party must establish an actual or potential threat of physical harm. See, e.g., *Planned Parenthood League of Massachusetts, Inc. v. Blake*, 417 Mass. 467, 473-74 n. 8, cert. denied, 115 S. Ct. 188 (1994); *Bally v. Northeastern University*, 403 Mass. 713, 719-20 (1989).

However, courts have construed the "coercion" element of the prong more broadly, indicating that that element may "rely on physical, moral, or economic coercion." See, e.g., *Kennie v. Nat. Res. Dept. of Dennis*, 451 Mass. 754 (2008); *Haufler v. Zotos*, 446 Mass. 469, 505 (2006).



In *Wodinsky*, citing the conduct noted above, the Appeals Court found "ample evidence ... overlooked by" the defendants to support a MCRA finding against them. MLW

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