19

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 19-1449

LOUISE CONNOR & others[1]

vs.

MARRIOT INTERNATIONAL, INC. & another[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Louise Connor and Stephanie Fishman work for Plaintiff NY Kids Showroom, Inc. and non-party Appaman, Inc, both of which sell high-end children's clothing. In September 2019, Plaintiffs went to the Fairfield Inn in Dedham, a hotel owned and operated by Defendants Marriot International, Inc. and Giri Dedham, LLC, with the intent to show their products to prospective customers. Plaintiffs allege that Defendants prevented them from doing so, had Ms. Connor arrested, and had Ms. Connor and Ms. Fishman escorted off the premises.

The First Amended Complaint brings three counts against Defendants: intentional infliction of emotional distress, tortious interference with advantageous business relations, and violation of M.G.L. c. 93A. Defendants have moved for summary judgment on all counts. I heard argument on August 18, 2022. For the reasons set out below, I will allow the motion.

Background

The following facts are undisputed. Certain facts are reserved for discussion below.

In September 2019, Plaintiffs each booked a three-night stay at the Fairfield Inn commencing September 14, 2019. The purpose of their stay was to showcase products to

[1] NY Kids Showroom, Inc. and Stephanie Fishman

[2] Giri Dedham, LLC d/b/a The Fairfield Inn Dedham

10/5/2022
RECEIVED & FILED 10/7/2022
CLERK OF THE COURTS
NORFOLK COUNTY

prospective customers of their companies, NY Kids Showroom and Appaman. On several past occasions, Plaintiffs had utilized the Fairfield Inn for this purpose.[3]

To facilitate the showcase of their products, Plaintiffs would ship boxes of sample merchandise to the hotel and wheel in large merchandise displays which they would then set up in the suites they rented. They would schedule appointments beforehand with potential customers and notify other potential buyers of times they could come view the products without appointments. No money was exchanged with the customers. If a customer liked certain products, he or she could place an order.

On the afternoon of September 14, 2019, Ms. Connor arrived at the hotel, checked in, and began setting up her suite to show products to customers. Ms. Fishman was running late and called the hotel ahead of time to let the staff know. She confirmed that her boxes of sample merchandise had arrived, and that the hotel would hold the suite she had booked.

After Ms. Connor checked in, a hotel employee, Matt Cooke, came to her room to inform her that she could not conduct any business there. Ms. Connor explained that she would just be showing the products and no money would be exchanged with the customers. Mr. Cooke left and returned a short while later. According to Ms. Connor, upon his return, Mr. Cooke said that the hotel's "policy had changed," they "were on a do not rent list" and "had to leave the premises," and his manager had told him that "he should call the police to remove [them]." See Joint Appendix ("J.A."), Connor Depo. at 15. Ms. Connor asked to see the hotel policy and the "do not rent" list but Mr. Cooke did not provide either. She also asked to see the manager but

[3] The parties dispute when this occurred. Defendants have put forth deposition testimony from employees who say that Plaintiffs stayed at the hotel during the summer of 2019, and were informed, upon checking out, that they could no longer do any business there. Plaintiffs have both put forth declarations averring that they did not stay at the hotel during the summer of 2019 (although they had stayed and conducted their business at the hotel at other times in the past), and that they were never informed of the policy in question before September 14, 2019. This dispute does not concern a material fact and so is irrelevant to my decision.

was told he was not there. Ms. Connor refused to leave the hotel, and the Dedham Police were called.

When Ms. Fishman arrived at the hotel, the police were already there. For approximately two hours, the four or five police officers on the scene attempted to help the parties come to a resolution but were unable to do so. An officer explained to Ms. Connor that she had to leave or the police would have to arrest her. "Out of frustration," she told police that she would not leave and that they could arrest her if need be. *Id.* at 28. After the police handcuffed her, Ms. Connor became upset and embarrassed and then agreed to leave. She was not taken to the police station or charged with any crime, and the hotel refunded her the money she paid for the room. Ms. Fishman, who never checked in, was not charged for her room.

Plaintiffs were able to check in to another hotel in Dedham that night. Ms. Fishman rescheduled all but one or two of her appointments with potential customers. Ms. Connor was also able to reschedule most of her appointments. Both claim they lost the business of potential walk-ins. Ms. Connor returned to the Fairfield Inn the next day to try and "catch appointments that [she] had not been able to contact." *Id.* at 41. When she arrived, Mr. Cooke asked her to leave and said he was calling the police. As she was leaving, she saw the police cruiser arriving.

Ms. Fishman describes she and Ms. Connor as being "humiliated" and "embarrassed" by what occurred at the Fairfield Inn on September 14, 2019. J.A., Fishman Depo. at 35. Ms. Connor states that as a result of what occurred, her reputation has been damaged and she has experienced stress and emotional harm.

Analysis

"Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Helfman* v. *Northeastern Univ.*,

485 Mass. 308, 314 (2020), quoting *Godfrey* v. *Globe Newspaper Co.*, 457 Mass. 113, 118-119 (2010). "The moving party bears the burden of demonstrating the absence of a triable issue of fact on every relevant issue." *Scholz* v. *Delp*, 473 Mass. 242, 249 (2015). The moving party may satisfy this burden by submitting affirmative evidence negating an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, "the nonmoving party must respond and make specific allegations sufficient to establish a genuine issue of material fact." *Barron Chiropractic & Rehab., P.C.* v. *Norfolk & Dedham Grp.*, 469 Mass. 800, 804 (2014). Applying this standard, I conclude that Defendants are entitled to summary judgment on all claims.

1. Intentional Infliction of Emotional Distress

To prove an intentional infliction of emotional distress claim, Plaintiffs have to establish four elements: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was 'extreme and outrageous,' was 'beyond all possible bounds of decency' and was 'utterly intolerable in a civilized community'; (3) that the actions of the defendant were the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was 'severe' and of a nature 'that no reasonable man could be expected to endure it.'" *Agis* v. *Howard Johnson Co.*, 371 Mass. 140, 144-145 (1976) (internal citations omitted). See also *Polay* v. *McMahon*, 468 Mass. 379, 385 (2014). Based on the evidence in the summary judgment record, Plaintiffs cannot prove the first and second elements of the claim.

Turning to the second (and most central) element first, which focuses on the outrageousness of the alleged conduct, Plaintiffs here assert that Defendants intentionally inflicted emotional distress upon them by "asking Plaintiffs to leave after arriving and starting to unpack" and subsequently "calling the Dedham Police on two separate occasions." See Plaintiff's Opposition at 9. The Massachusetts Appeals Court addressed a claim based on similar conduct in *Ziemba* v. *Fo'cs'le, Inc.*, 19 Mass. App. Ct. 484 (1985). In that case, a bar had a "house rule" that children were not allowed on the premises after 6:00 pm. *Id.* at 484-485. A bartender, who was enforcing the policy, asked a couple with a child to leave the premises or she would call the police. *Id.* at 485. The couple refused to leave. *Id.* When the police arrived, one of them told the police "If you have to arrest me, then arrest me." *Id.* at 489. Unlike in today's case, the couple was actually escorted to the police station by the officers. *Id.* They sued for intentional infliction of emotional distress. The Appeals Court held as a matter of law, that the bar's conduct was not extreme and outrageous, beyond all possible bounds of decency or utterly intolerable in a civilized community. I similarly conclude that it is not extreme and outrageous or utterly intolerable in a civilized society for a hotel to tell patrons, who were intent on using their room in a way the hotel did not want, that they could not stay, or for the hotel to call the police when one of the patrons refused to leave.

Also missing in the summary judgment record is proof of the first element of a claim for intentional infliction of emotional distress: that Defendants acted with the intent to inflict emotional distress on Plaintiffs or knew or should have known that emotional stress was the likely result of their conduct. In the rare cases in which the Supreme Judicial Court has held that a plaintiff has stated a claim for intentional infliction of emotional distress, generally the defendant has taken actions whose sole purpose is to emotionally distress the plaintiff, as a

means to an end. For example, in *George* v. *Jordan Marsh Co.*, 359 Mass. 244 (1971), a bill collector, knowing that the plaintiff was not liable for the debt of her emancipated son, nonetheless repeatedly telephoned her during late evening hours, sent her bills indicating that her own account had been "referred to law and collection department," wrote her letters stating that her own credit had been revoked, and engaged in "numerous other dunning tactics," *id.* at 245-246 – all aimed at the goal of "intentionally caus[ing] severe emotional distress," *id.* at 255, so that the plaintiff would pay her son's bill. Similarly, in *Agis*, a restaurant manager called together all his waitresses and informed them that "there was some stealing going on," and then announced that, until the responsible party was discovered, he would be firing the waitresses in alphabetical order. Carrying out his threat, the manager then fired the plaintiff first, because her last name began with "A." 371 Mass. at 141. Once again, the defendant intentionally used emotional distress as a weapon, in an attempt to convince the plaintiff or one of her fellow waitresses to reveal the identity of the thief. Unlike these cases, the summary judgment record here contains no facts that would permit a jury to reasonably conclude that Defendants acted with the intention of imposing emotional distress on Plaintiffs. Nor could a reasonable jury conclude that Defendants should have known that emotional distress would likely result from taking the natural step of calling for police assistance to remove an individual who refused to leave upon request or calling for police assistance upon having the individual return to the premises the next day.

When the Supreme Judicial Court first allowed claims "of liability for outrageous conduct causing severe emotional distress, even without manifestation of bodily harm . . . [the Court] warned . . . that 'the door to recovery should be opened but narrowly and with due caution.'" *Foley* v. *Polaroid Corp.*, 400 Mass. 82, 99 (1987) (internal citation omitted), quoting

Agis, 371 Mass. at 144. The facts in the summary judgment record would not let Plaintiffs slip through that narrow opening. Defendants are entitled to summary judgment on this claim.

2. Tortious Interference with Business Relations

To prove a claim for tortious interference with advantageous business relations, Plaintiffs must demonstrate "that a business relationship from which the plaintiff might benefit existed; the defendant knew of the relationship; the defendant intentionally interfered with the relationship for an improper purpose or by improper means; and the plaintiff was damaged by that interference." *Pembroke Country Club, Inc.* v. *Regency Sav. Bank, F.S.B.*, 62 Mass. App. Ct. 34, 38 (2004). The "improper conduct" element of the claim "may include ulterior motive (e.g., wishing to do injury) or wrongful means (e.g., deceit or economic coercion)." *Cavicchi* v. *Koski*, 67 Mass. App. Ct. 654, 658 (2006) (citation omitted). "Improper means include violation of a statute or common-law precept, e.g., by means of threats, misrepresentation, or defamation." *Id.*

Plaintiffs contend that "Defendants' actions in forcing Plaintiffs to leave on the first night of their three-night stay, without prior warning, and calling the police to have them removed, constituted intentional interference with Plaintiffs' business relationships." Plaintiffs' Opposition at 13-14. This claim fails because there is no evidence in the record to support that Defendants acted with an improper purpose or by improper means.

As to the Defendants' purpose for insisting that Plaintiffs leave the property, Defendants point to evidence in the record that they had a legitimate business reason for their actions—the Plaintiffs were violating the hotel's policy that its patrons could not solicit business out of their hotel rooms. See J.A., Cassano Depo. at 33 (explaining that the police were called "due to [Plaintiffs'] refusal to leave for the violation[] of the policy for soliciting business"). The general

manager of the Fairfield Inn at the time of the incident, Corey Cassano, testified in his deposition that the policy was enacted and being enforced to "prevent a safety risk" to registered guests posed by unregistered persons coming into the building. *Id.* at 33-34. Plaintiffs have pointed to no evidence in the record to dispute this proffered reason for asking them to leave and subsequently calling the police when Ms. Connor refused. See *Pembroke Country Club, Inc.*, 62 Mass. App. Ct. at 39 (no evidence of improper purpose for a tortious interference claim where defendant's actions were motivated by its legitimate business interests).

Nevertheless, Plaintiffs contend that because there is no documentary evidence of the hotel's no solicitation policy in the record or evidence of other instances where the policy was enforced against other guests, I should permit the case to go to a jury to decide whether Defendants were using the purported policy as a pretext for some improper purpose. Such speculation, without more, is insufficient to create a genuine issue of material fact as to whether Defendants had some ulterior motive in insisting Plaintiffs refrain from conducting business out of their rooms or leave the premises. *Shea* v. *Emmanuel College*, 425 Mass. 761, 763 (1997) (speculation as to college's motivation for actions was not sufficient to create a dispute of material fact to overcome summary judgment). Not only have Plaintiffs failed to articulate any possible improper purpose behind Defendants' actions, but it is hard to imagine how Defendants would economically benefit from preventing Plaintiffs from conducting their business, especially since; Defendants voluntarily refunded all the money they had received from Plaintiffs for the rooms.

Similarly, Plaintiffs have not pointed to any evidence or made any argument that Defendants interfered with Plaintiffs' business relationships by an improper means. Thus, there is insufficient evidence to support a claim for tortious interference.

3. Violation of M.G.L. c. 93A

Massachusetts General Laws c. 93A prohibits "unfair or deceptive practices in the conduct of any trade or commerce." M.G.L. c. 93A, § 2(a). To rise to the level of a violation of Chapter 93A, the alleged conduct must fall "within the penumbra of some common-law, statutory, or other established concept of unfairness; [be] immoral, unethical, oppressive, or unscrupulous; [and] . . . cause[] substantial injury." *Linkage Corp.* v. *Trustees of Boston Univ.*, 425 Mass. 1, 27 (1997). In deciding questions of unfairness, I am to focus "on the nature of challenged conduct and on the purpose and effect of that conduct as the crucial factors." *Massachusetts Employers Ins. Exch.* v. *Propac-Mass, Inc.*, 420 Mass. 39, 42-43 (1995). Although "whether a particular set of acts, in their factual setting, is unfair or deceptive is a question of fact . . . whether conduct found to be unfair or deceptive rises to the level of a chapter 93A violation is a question of law." *HI Lincoln, Inc.* v. *S. Washington St.*, LLC, 489 Mass. 1, 13–14 (2022) (citations omitted).

Plaintiffs allege that Defendants committed a violation of M.G.L. c. 93A by "allowing [them] to book their stay, arrive at the hotel and unpack, and then forcing them to leave." See Plaintiffs' Opposition at 3. Even accepting as true the disputed facts in Plaintiffs' favor—that Defendants were well aware of Plaintiffs' intent to use the rooms for showcasing their products and did not inform either Plaintiff before her arrival that doing so was in violation of a new hotel policy—Defendants' actions do not rise to the level of a Chapter 93A violation.

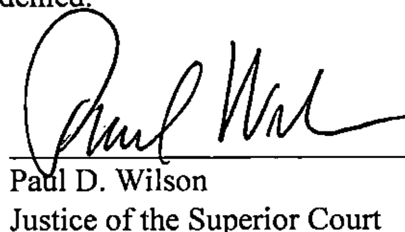
As noted, unrebutted evidence in the summary judgment record demonstrates that Defendants sought to prevent Plaintiffs from soliciting business out of their rooms to ensure the security of all guests. While it certainly would have been better customer service for Defendants

to have informed Plaintiffs beforehand that they would not be able to utilize their residential rooms for business purposes as they had in the past, any failure to do so would not amount to the "immoral, unethical, oppressive, or unscrupulous" behavior characteristic of Chapter 93A claims. Nor have Plaintiffs put forth any "common-law, statutory, or other established concept of unfairness" that requires a hotel to notify guests of new policies before their stays.

To the extent that Plaintiffs assert that M.G.L. c. 140, § 12B required such notice, I disagree. That statute provides that an "innkeeper may remove or cause to be removed from a hotel, a guest or other person who...violates a rule of the hotel that is clearly and conspicuously posted at or near the front desk and on the inside of the entrance door of every guest room." Nothing in the statute's plain language mandates notice of hotel policies prior to check in, restricts a hotel from enforcing a policy it deems in the best interests of its guests, or limits a hotel's ability to remove a guest who refuses to comply with a policy once she is informed of it. Indeed, other language in the statute gives a hotel broad authority to remove a guest who "causes or threatens to cause a disturbance," without mentioning the posting of any notice to that effect. See M.G.L. c. 140, § 12B. Accordingly, I conclude that the record evidence cannot support a Chapter 93A violation.

CONCLUSION AND ORDER

For these reasons, the Defendants' Motion for Summary Judgment is **ALLOWED**. Defendants' request for attorneys' fees and costs is denied.



October 5, 2022

Paul D. Wilson
Justice of the Superior Court