Docket

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1682CV01088

WILLIAM TERRY

vs.

HOSPITALITY MUTUAL INSURANCE COMPANY

MEMORANDUM OF DECISION AND ORDER ON: (1) DEFENDANT'S MOTION TO ALTER OR AMEND FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT; (2) DEFENDANT'S MOTION FOR RECONSIDERATION OF THE DENIAL OF THE RULE 41(b)(2) MOTION; (3) PLAINTIFF'S MOTION TO AMEND THE COURT'S FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR ENTRY OF JUDGMENT; AND (4) PLAINTIFF'S MOTION FOR REASONABLE ATTORNEY'S FEES AND COSTS

The plaintiff, William Terry ("Terry"), obtained a jury verdict in his favor against Bar Management Corp., d/b/a Boston by the Viaduct a/k/a Canton Junction Sports Pub ("Canton Junction"), Michael Connors ("Connors"), and Kilder Cardona ("Cardona") for injuries he sustained in a fight with Connors and Cardona outside of Canton Junction after the bar held a beer pong tournament ("underlying suit"). Thereafter, in the instant action, Terry alleged that the conduct of Canton Junction's insurer, Hospitality Mutual Insurance Company ("Hospitality"), prior to and throughout the litigation of his underlying suit amounted to unfair and deceptive acts in violation of G. L. c. 93A and c. 176D. The Court conducted a jury-waived trial on the matter beginning on November 26, 2018 and ending on December 10, 2018. On September 17, 2019, the Court entered judgment for Terry and awarded him double his damages for a total of $500,000, plus the reasonable costs and fees he incurred in pursuing the action against Hospitality.

The matter is now before the Court on several post-judgment motions: (1) Defendant's Motion to Alter or Amend Findings of Fact, Rulings of Law and Order for Entry of Judgment; (2) Defendant's Motion for Reconsideration of the Denial of the Rule 41(b)(2) Motion; (3) Plaintiff's Motion to Amend the Court's Findings of Fact, Rulings of Law and Order for Entry of Judgment; and (4) Plaintiff's Motion for Reasonable Attorney's Fees and Costs. For the reasons stated below, the Court **DENIES** the defendant's motions and **ALLOWS** the plaintiff's motions.

I. Defendant's Motion to Alter or Amend Findings of Fact, Rulings of Law and Order for Entry of Judgment

In its Findings of Fact, Rulings of Law, and Order for Entry of Judgment (the "Decision"), the Court concluded that Connors and Cardona were the aggressors in the fight with Terry, that there was ample evidence that Connors and Cardona were exhibiting signs of intoxication while at Canton Junction, and that Canton Junction asked the men to leave the bar because of their aggressive behavior. Further, the Court concluded that this evidence was available to Hospitality during its investigation, but that Hospitality engaged in a results-oriented investigation, disregarding evidence that was unfavorable to its desired outcome and cherry-picking facts that supported its pre-determined position of no liability. Hospitality's conduct in this regard amounted to a violation of G. L. c. 176D, § 3(9)(d). Further, when liability of its insured became reasonably clear, Hospitality failed to effectuate a fair settlement with Terry in violation of G. L. c. 176D, § 3(9)(f).[1] Based upon these violations of G. L. c. 176D, the Court concluded that Hospitality committed a violation of G. L. c. 93A, § 9. In its Motion to Alter or Amend Findings of Fact, Rulings of Law and Order for Entry of Judgment, Hospitality contends

[1] The Court also concluded that Hospitality violated G. L. c. 176D, § 3(9)(c) by failing to "adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies."

that the Court should vacate its judgment for Terry because it made several factual and legal errors. The Court addresses Hospitality's contentions in turn.

A. Factual Findings

Hospitality asserts that the Court made several erroneous factual findings in the Decision. First, it contends that the Court incorrectly found that Stephanie George, a claims representative from Hospitality, ignored statements made by the beer pong tournament host, Paul Leonard, to the Canton Police on the night of the incident. There was no error in this finding. On the night of the incident, police were called to Canton Junction, and they interviewed witnesses. Leonard told police that Connors and Cardona became aggressive because they were losing the beer pong tournament and that they were both heavily intoxicated. See HIMC2747, 5339. George did not include this statement in her claims notes, writing instead that "there is no evidence that alcohol was a factor. Neither the plaintiff nor the AIPs (allegedly intoxicated person) were intoxicated." HIMC5344. The Court concluded that based on this evidence, George willfully disregarded Leonard's statement to police which provided some evidence of intoxication. The Court acknowledges that subsequent to the night of the incident, Leonard made conflicting statements about whether he observed Connors and Cardona exhibiting signs of intoxication.[2] However, when faced with Leonard's statements made to police on the night of the incident and his recantation of those statements after time had passed and he became aware that he might be subject to liability, it was unreasonable for George to disregard Leonard's reliable statements regarding intoxication made on the night of the incident.[3]

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[2] The Court recognizes that it erred when it stated that George declined to interview Leonard as she did, in fact, interview him on July 20, 2011. See Decision at 47, HIMC0367. However, this error does not change the Court's conclusion that George (and another claims representative, William Reynolds) "ignored, or at the very least downplayed, the police reports of the incident, which provided evidence that both Connors and Cardona were heavily intoxicated that evening." See Decision at 46.

[3] Section V of the defendant's motion also contends that the Court erred in finding that Hospitality's claims representatives willfully chose to ignore evidence of liability. See Decision at 28. This finding was properly

Hospitality also argues that the Court erred in finding that David Gaffey, Connors' and Cardona's friend, "was consistent in his statements to police and deposition testimony that the three men were drinking heavily all night and were intoxicated while inside the bar." Decision at 16. The Court based its finding on the April 9, 2012 police report where Gaffey stated that he, Cardona, and Connors "had all been drinking heavily that night," and that while still at the bar, Cardona had grabbed Gaffey by the throat, see HIMC2753-54, as well as Gaffey's deposition testimony that Cardona grabbed him by the throat and pushed him up against a wall inside the bar shortly before leaving, and that Cardona and Connors were intoxicated when they were inside Canton Junction. See HIMC4347-48. That Gaffey was not able to point to specific signs of intoxication other than Connors being louder than usual does not detract from the consistency of his testimony or the Court's conclusion that Hospitality disregarded facts that suggested Canton Junction was liable.[4]

Hospitality contends that the Court engaged in improper speculation when it stated that "George failed to request preservation of surveillance camera footage [from Canton Junction], which, if anything, would have corroborated the evidence that Connors and Cardona were intoxicated," and when it stated that Connors and Cardona had started the fight with Terry. Both of these findings were grounded in evidence before the Court. In particular, the Court reviewed video footage from the Greatest Bar in which Connors and Cardona appeared intoxicated and had evidence before it that Connors and Cardona drove directly from the Greatest Bar to Canton Junction (in twenty to twenty-five minutes) where they continued drinking. Thus, it was

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supported by evidence that despite the accumulating evidence of Connors' and Cardona's intoxication while at Canton Junction, the defendant's liability assessment never changed from questionable to doubtful.

[4] The Court similarly did not err when it found that "[Sebastian] Lena consistently reported that Connors and Cardona were intoxicated, and hostile and aggressive while inside Canton Junction." See Decision at 25. Lena described Connors' and Cardona's behavior while inside the bar as hostile and aggressive to police and to the grand jury, see HIMC1600, 2749, and at the trial of the underlying suit, Lena testified that Connors and Cardona did not appear to be "too intoxicated" or "too drunk" suggesting that they were exhibiting some signs of intoxication.

reasonable for this Court to infer that the Canton Junction surveillance footage would have also shown that Connors and Cardona were intoxicated.[5] Further, based on the fact that Connors and Cardona pleaded guilty to Assault and Battery causing Serious Bodily Injury and to Mayhem, the Court properly inferred they started the fight.

The remaining factual arguments by Hospitality incorrectly state the findings of the Court. Contrary to Hospitality's assertions, the Court did not find that Canton Junction was put on notice by an assault in November 2013. Rather, the Court concluded that despite Hospitality's awareness of the November 2013 incident as well as other instances of violence at Canton Junction on evenings when the bar held beer pong tournaments, it did not reevaluate the possibility of Canton Junction's liability for the matter at hand. Similarly, contrary to Hospitality's contention, the Court never concluded that Cardona's grabbing of Gaffey's throat put Canton Junction on notice that hosting the beer pong tournament created a dangerous condition. It concluded that after becoming aware of Cardona's actions, Hospitality did not reevaluate Canton Junction's potential liability.[6] The Court also did not, as Hospitality asserts it did, determine that the photograph of the sneaker imprint on Terry's face proved that he did not start the fight. The Court noted that the sneaker imprint was photographic evidence that did not rely on Terry's credibility and that when Hospitality's employee, Stephanie Connon, stated that

[5] In Section VI of Hospitality's memorandum, Hospitality contends that the Court improperly relied on the plaintiff's liability expert, James Staples, in the Decision. Staples testimony was excluded by the Court in the underlying suit, however in the Decision, this Court cited his report stating that Connors and Cardona were intoxicated at the Greatest Bar and Canton Junction. The inadmissibility of Staples' opinion in the underlying suit does not mean that it should have been disregarded by Hospitality during its assessment of liability. For the reasons stated in the Court's Decision, the willful disregard of Staples' opinion was one of many ways that Hospitality's investigation was deficient.

[6] Hospitality also contends that the Court "incorrectly criticized Hospitality for not interviewing Terry" when, in fact, Hospitality requested a statement from Terry on July 21, 2011 and August 27, 2013, and Terry did not respond. This assertion misrepresents the Court's finding. Taken in context, the Court's finding accurately stated that George did not interview Terry during her initial sixty-day evaluation of the case.

it never occurred to her that the photo showed a sneaker tread, it could be inferred that she never considered the possibility that Connors and Cardona beat up Terry.

B. Legal Standard

Hospitality argues that this Court misapplied the standard under *Vickowski* v. *Polish Am. Citizens Club of Town of Deerfield, Inc.*, 422 Mass. 606 (1996) when assessing the dram shop liability of Canton Junction and, therefore, it applied the "incorrect yardstick to review Hospitality's liability evaluation." As an initial matter, the Court notes that Canton Junction's liability could stem from either dram shop liability under *Vickowski* or from negligence in failing to provide proper security as both were covered under Canton Junction's insurance policy with Hospitality. See *Westerback* v. *Harold F. LeClair Co.*, 50 Mass. App. Ct. 144, 146 (2000) (noting a proprietor may be liable to its patrons for criminal acts of others if the proprietor fails to provide reasonably needed security precautions in or just outside the premises). See also *Carey* v. *New Yorker of Worcester, Inc.*, 355 Mass. 450, 452 (1969). The defendant makes no argument that Canton Junction was not liable under a theory of negligent security. As to the defendant's argument that the Court applied the wrong standard under *Vickowski*, the Court disagrees.

In *Vickowski*, the Supreme Judicial Court held that a tavern keeper may be negligent for "serving alcohol to a person who already is showing discernible signs of intoxication." 422 Mass. at 610. Thus, in evaluating whether Hospitality properly assessed its liability, this Court examined whether there was some evidence to establish that more probably than not Connors and Cardona were exhibiting signs of intoxication at the time Canton Junction served them their last drinks. See *Douillard* v. *LMR, Inc.*, 433 Mass. 162, 164-165 (2001); *Vickowski*, 422 Mass. at 610; *Rivera* v. *Club Caravan, Inc.*, 77 Mass. App. Ct. 17, 20 (2010).

This Court assessed the credibility of witnesses and reviewed the extensive evidence presented and concluded that there was ample evidence that Canton Junction served alcohol to Connors and Cardona when they were showing discernible signs of intoxication. The conclusion was properly supported by statements from witnesses at the bar that night including Leonard, Lena, Gaffey, and Christopher Reinhart, that Connors and Cardona exhibited signs of intoxication (hostility, aggression, loudness, belligerence, and rowdiness) while at Canton Junction.[7] Further, there was evidence that Connors opened a bar tab at 10:30 p.m. and that he, Cardona, and Gaffey were served four Blue Moon drafts, two PBRs and a pitcher of beer. Connors paid the bar tab at 1:01 am. At 2:00 a.m., just an hour after leaving the Canton Junction, Connors flipped over his truck and crashed into a tree in Peabody. The police report noted a strong odor of alcohol on Connors' breath; an excited attitude; severely bloodshot eyes; flushed facial color and slurred speech; and his failure of field sobriety tests. See *Vickowski*, 422 Mass. at 612 n.5. ("Evidence of subsequent intoxication at the scene of an accident could bolster evidence of a patron's obvious intoxication while at a tavern"). The Court properly assessed Hospitality's liability based on this extensive evidence that Connors and Cardona exhibited signs of intoxication at the time Canton Junction served them their last drinks.

The defendant's perceptions of the evidence neither detract from the Court's findings nor compel a conclusion that Canton Junction did not serve Connors and Cardona after they showed visible signs of intoxication. Hospitality places significance on testimony by Canton Junction's manager, Joseph Muresco, that Canton Junction's practice is not to serve pitchers after midnight,

[7] To the extent that Hospitality asserts that these witnesses/statements were not credible, in a bench trial, "the credibility of the witnesses rests within the purview of the trial judge." *Robert & Ardis James Foundation* v. *Meyers*, 474 Mass. 181, 186 (2016). The Court determined that the witnesses' statements were credible and that no reasonable insurer would have determined that the only credible statements were those that supported a lack of liability on the part of Canton Junction.

and argues that since a pitcher was the last item on the receipt, the Court must conclude that Canton Junction did not serve Connors and Cardona after midnight. The evidence compels no such conclusion. Rather, the evidence shows that Connors and Cardona were showing signs of intoxication before they arrived at Canton Junction and throughout their time at the bar. There are no timestamps on the receipts indicating when particular drinks were served, and indeed, as noted in the Decision, there were multiple reasons to question the credibility of Muresco. The defendant also argues that it reasonably concluded that Connors and Cardona were faking drunk in the video of them at the Greatest Bar prior to going to Canton Junction. The Court viewed this video footage and for the reasons explained in its Decision, determined Connors and Cardona appeared intoxicated at the Greatest Bar. As further explained in the Decision, Hospitality's conclusion that the video had no impact on potential liability was not reasonable.

C. Court's Finding of a Violation of G. L. c. 176D, § 3(9)(f)

There is no merit to Hospitality's arguments that the Court misapplied the standard under which G. L. c. 176D, § 3(9)(f) claims are evaluated. Contrary to the defendant's assertions, the Court did not determine that the insurer was required to reach the same conclusions regarding the evidence as reached by the Court. Rather, the Court concluded that the evidence showed that from the outset, Hospitality arrived at a conclusion that the insured's liability was doubtful and then cherry-picked facts supporting this position. The Court objectively viewed the evidence available to Hospitality and determined that "no reasonable insurer would have failed to settle the case within the policy limits." *Hartford Cas. Ins. Co.* v. *New Hampshire Ins. Co.*, 417 Mass. 115, 121 (1994).[8]

[8] Contrary to Hospitality's argument in Section VIII of its memorandum, the Court did not hold Hospitality to a standard of perfection. The Court properly evaluated whether Hospitality conducted a "reasonable investigation" by evaluating whether it made a neutral assessment of its potential fault, and concluded that it did not. See *McLaughlin* v. *American States Ins. Co.*, 90 Mass. App. Ct. 22, 32 (2016).

Nor is there any merit to Hospitality's assertion that the Court improperly relied on the attachment Judge Leibensperger issued against the bar to determine when liability was reasonably clear. The Decision noted that with the information available to Hospitality, liability should have been reasonably clear before the attachment issued. Once the attachment issued on January 8, 2015, and Judge Leibensperger found that "there [wa]s a reasonable likelihood that the plaintiff w[ould] recover judgment, including interest and costs, in an amount equal to or greater than [$125,000] over and above any liability insurance shown by the defendant to be available to satisfy the judgment," no reasonable insurer would have failed to settle the case. See *Hayes* v. *CRGE Foxborough, LLC*, 167 F. Supp. 3d 229, 238 (D. Mass. 2016), citing Mass. R. Civ. P. 4.1 (attachment of property requires moving party to show it is "likely to prevail on the merits and obtain damages in the necessary amount"). Hospitality did not even reevaluate liability when the Court denied its motion to reconsider the attachment. Thus, the Court's consideration of the attachment was proper.[9]

D. Defendant's Remaining Arguments

Hospitality makes several additional arguments which have no merit. Hospitality argues that the Court should have found that Connon acted in good faith at all times. However, for the reasons stated in the Decision and those outlined in Section XI of the plaintiff's opposition to this motion, the Court properly concluded that Connon decided early on that Terry was the aggressor and held onto the belief that Connors and Cardona were not intoxicated at Canton Junction in spite of evidence to the contrary. Connon's refusal to impartially consider the evidence available and to admit any liability on the part of Canton Junction is not an indication of good faith.

[9] For further reasons explained in Section IV of the plaintiff's opposition to the defendant's motion, this Court properly considered the attachment.

Hospitality contends that the Court improperly disregarded Terry's comparative negligence. A fair reading of the Decision demonstrates that the Court carefully weighed Terry's role in the incident and concluded that Connors and Cardona were the aggressors. To the extent that there was any doubt as to Terry's comparative negligence, Connors' and Cardona's guilty pleas to assault and mayhem in January 2013 acknowledged that they were at fault. Hospitality also asserts that the Decision "fails to state that no reasonable insurer could rely on Dr. Masi's review without violating c. 176D." See Hospitality's Memorandum at 20. The Court was not required to make such a finding. With respect to Dr. Masi, the Court concluded that "Hospitality focused on Dr. Masi's report, *without considering all of the information available to them.*" Decision at 34 (emphasis added). Hospitality's focus on only evidence that supported its desired outcome was in part why the Court concluded it violated c. 176D.

Finally, the defendant argues that the Decision failed to state when damages became reasonably clear and what value of damages a reasonable insurer could have put on Terry's claim without violating c. 176 D.[10] To the extent that the Court's Decision was unclear, it concluded that liability (fault *and* damages) was reasonably clear at least as of January 2015, when Judge Leibensperger found there was a reasonable likelihood that the plaintiff would recover over the policy limit. At this point (if not before), it was clear that a $25,000 settlement offer was unreasonable. See *Clegg* v. *Butler*, 424 Mass. 413, 422 (1997). Indeed, Hospitality's own claims representative estimated the value of Terry's causally related injuries to be three times the amount Hospitality offered to settle the case. Once the attachment issued, no reasonable insurer would have failed to offer at least the amount it calculated for his injuries.

[10] Within this argument, the defendant also contends that the Court should have noted that Terry's vision was unaffected by his injuries. The Decision already noted Terry's inconsistencies when describing his injuries in that regard.

For these reasons, the Court will not alter or amend its Decision based on any of the arguments in Hospitality's motion.

II. Defendant's Motion for Reconsideration of the Denial of the Rule 41(b)(2) Motion

On March 29, 2019, Hospitality moved for dismissal of the plaintiff's claims under Mass. R. Civ. P. 41(b)(2), arguing in part that the plaintiff's expert, Arthur Kiriakos, was not credible, and without credible and reliable expert testimony, the plaintiff could not prove his claims under G. L. c. 176D, § 3(9). On September 17, 2019, this Court denied the Defendant's Rule 41(b)(2) Motion for Dismissal noting that it "did not rely on [Kiriakos'] testimony to reach its ultimate conclusion that there was a violation of 176D, § 3(9) and c. 93A nor does the court find that it needed expert testimony to reach its ultimate conclusion. *Bobick* v. *U.S. Fid. & Guar. Co.*, 439 Mass. 652, 661 (2003)." See Decision and Order on Defendant's Rule 41(b)(2) Motion for Dismissal at 1. Hospitality now moves for reconsideration of that decision arguing that the Court incorrectly applied the law and reasserting its assertion that credible expert testimony was necessary for the plaintiff to support his claims.[11] The Court is not so persuaded.

Although it is true that expert testimony may be necessary *under some circumstances* to establish that an insurer has breached its statutory duty in settling claims, it is not required in all cases. See *Bobick*, 439 Mass. at 661 ("We do not accept the Appeals Court's suggestion that [the insurer] was required to meet this burden at trial [duty to prove offers made were reasonable] with evidence of insurance practices in similar circumstances and expert testimony.");[12] *River*

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[11] The defendant's motion for reconsideration also contends that Hospitality's $25,000 settlement offer was reasonable as a matter law and the Court should "amend its findings" to conclude as much. Such an argument was neither made in the defendant's original Rule 41(b)(2) motion nor addressed by the Court in its ruling on that motion. Accordingly, the argument is not proper in a motion to reconsider the Court's denial of the Rule 41(b)(2) motion. Moreover, for reasons stated in the Decision, the $25,000 offer was not reasonable as a matter of law.

[12] Hospitality's contends that *Bobick* is not applicable to the instant matter because in *Bobick* the issue was whether the defendant insurer was required to proffer expert testimony to establish the reasonableness of a settlement offer, not whether the plaintiff was required to provide expert testimony to establish that no reasonable insurer would have

Farm Realty Trust v. *Farm Family Casualty Ins. Co.*, 943 F.3d 27, 37 (1st Cir. 2019) ("The SJC has rejected the proposition that an insurer must provide 'evidence of insurance industry practices in similar circumstances and expert testimony' in order to prove it acted reasonably."); *Southern Worcester County Regional Vocational School Dist.* v. *Utica Mut. Ins. Co.*, 2010 WL 3222015 at *1 (D. Mass 2010) ("Utica Mutual contends that expert testimony was essential to prove a violation of insurance industry norms and standards. The Court disagrees . . . [T]he Court does not find expert testimony to be required to resolve the issues presented in this matter, which are relatively simple and straightforward."). Here, where Hospitality plainly failed to objectively evaluate the case, and where prior to trial, liability was undoubtedly reasonably clear based on considerable evidence of Connors' and Cardona's intoxication at Canton Junction, no expert testimony was necessary to establish that Hospitality's actions fell below industry standard. There was, therefore, no error in the Court's conclusion that expert testimony was unnecessary to determine whether there was a violation of 176D, § 3(9) and c. 93A.[13]

Hospitality cites a number of cases in support of its argument that expert testimony is necessary to support a violation of 176D, § 3(9) and c. 93A, however, none of these cases compel such a conclusion in this case. See *Herbert A. Sullivan, Inc.* v. *Utica Mut. Ins. Co.*, 439 Mass. 387, 402–403 (2003) (holding that the standard of reasonable conduct as to an insurer's contractual obligation *to provide defense* for any claim made against its insured required expert

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failed to settle the case within the policy limit. The Court does not agree. The standard of care an expert would be offered to establish in either case is the reasonableness of a settlement offer. Therefore, it stands to reason that if an expert is not required for the insurer to establish a settlement offer was reasonable, it is also not required for a plaintiff to establish that it was not reasonable.

[13] The defendant has also filed an emergency request for leave to provide supplemental authority to notify the Court of a recent decision in the Appellate Division of the District Court in which the court, in affirming summary judgment in favor of an insurer in a c. 176D and c. 93A case, noted that the plaintiff did not produce expert opinion evidence that the insurer's conduct fell below the standard of care. See *McLellan* v. *The Hanover. Ins. Group, Inc.* No. 19-ADCV-68NO (2020). This Court has reviewed *McLellan* and is not persuaded that expert testimony is always required to establish the standard of care in this context.

testimony) (emphasis added); *Silva* v. *Norfolk & Dedham Mut. Fire Ins. Co.*, 91 Mass. App. Ct. 413, 419 (2017) (considering whether the trial judge acted within his discretion in excluding the plaintiff's expert testimony where the judge found it would not assist him in understanding the insurer's conduct); *Villanueva* v. *Commerce Ins. Co.*, 89 Mass. App. Ct. 1124, 2016 WL 2907827 at *4 (2016) (unpublished Rule 1:28 decision) (concluding that "although expert testimony may not be required in every case asserting a breach of the duty to settle claims under G.L. c. 176D, in view of the defendant's inability to demonstrate that liability for the underlying accident was reasonably clear, it was needed *in the present case*") (emphasis added). Accordingly, Hospitality's motion for reconsideration is denied.

III. Plaintiff's Motion to Amend the Court's Findings of Fact, Rulings of Law and Order for Entry of Judgment

The Court ordered judgment entered for Terry and against Hospitality in twice the amount of the judgment in the underlying case ($250,000) for a total of $500,000, plus the reasonable costs and fees Terry incurred in pursuing this action. Terry's Motion to Amend the Court's Findings of Fact, Rulings of Law and Order for Entry of Judgment asserts that the judgment in the underlying case should have included the sum of $250,000 plus statutory costs ($15,000), and statutory interest ($81,452.12)[14] for a total of $346,452.12 and that that is the sum this Court should have doubled. See *Anderson* v. *National Union Fire Ins. Co. of Pittsburgh*, 476 Mass. 377, 383 (2017). The defendant concedes that Terry's motion correctly states the law on what constitutes the "judgment" for purposes of multiplication under G. L. c. 93A, § 9(3). Accordingly, the Court allows the Plaintiff's motion and will amend the judgment to reflect that Terry is entitled to twice the amount of $346,452.12 for a total of $692,904.24.

[14] The plaintiff's motion requests $81,945.26 in interest, however, at oral argument on the motion, the plaintiff assented to a reduction in interest by $493.14.

IV. Plaintiff's Motion for Reasonable Attorney's Fees and Costs

Under G. L. c. 93A, § 9(4), the plaintiff is entitled to reasonable attorneys' fees and costs incurred in connection with the action. The plaintiff has submitted a motion for attorney's fees in the amount of $130,307.50 and costs in the amount of $21,399.34. The defendant raises a number of objections to these fees.[15]

First, the defendant contends that since the Court discredited the plaintiff's expert, Arthur Kiriakos, the amount included for his fee ($10,300.86) should not be recoverable. The Court does not agree. The plaintiff paid Kiriakos for attending a deposition and preparing for and providing hours of trial testimony on three separate dates. Given the time spent by Kiriakos, the fee does not appear excessive. The Court concludes that the plaintiff is entitled to reimbursement of his fees even though the Court gave little weight to his testimony. See *Linthicum* v. *Archambault*, 379 Mass. 381, 388 (1979), abrogated on other grounds by *Knapp Shoes, Inc.* v. *Sylvania Shoe Mfg. Corp.*, 418 Mass. 737 (1994) ("Reasonable expert witness fees should normally be recoverable in a c. 93A case" and the amount is within the court's discretion).

The defendant raised objections to several line items which defendant contended did not appear related to this case. In the plaintiff's reply to the opposition, he has provided adequate explanation (and supporting documentation) for costs associated with professional services provided by Curly & Curly, PC as well as the disputed line items for dates September 21 and September 24, 2018. Plaintiff concedes that the line items on November 30, 2018 ($82.50) and September 26, 2019 ($55.00) referenced by the defendant should not have been included and

[15] In addition to the noted objections, the defendant also objected to the increase of $100 per hour for Attorney Bae's hourly rate beginning in July 2018. The plaintiff explained the fee increase in the reply to the opposition as well as at oral argument. At oral argument, the defendant conceded that plaintiff's explanation was reasonable. The explanation was also satisfactory to the Court. The Court will not, however, apply the higher rate prior to July 2018.

assents to the reduction of the claimed fees by $137.50. Additionally, the plaintiff assents to the reduction of costs by $275.00 for a duplicative entry.

With respect to the defendant's remaining objections to the claimed costs and fees, the Court will allow the plaintiff's redacted line items and the few entries which the defendant contends are too vague. The Court finds them sufficiently detailed to warrant reimbursement.

Accordingly, the Court will award the plaintiff $130,170 in attorney's fees and $21,124.34 in costs for a total of $151,294.34.

ORDER

For the reasons stated above, it is **ORDERED** that Defendant's Motion to Alter or Amend Findings of Fact, Rulings of Law and Order for Entry of Judgment is **DENIED**. Defendant's Motion for Reconsideration of the Denial of the Rule 41(b)(2) Motion is **DENIED**.

Plaintiff's Motion to Amend the Court's Findings of Fact, Rulings of Law and Order for Entry of Judgment is ALLOWED. The judgment is amended and entered for Terry in twice the amount of the judgment in the underlying case ($346,452.12) for a total of $692,904.24.

Plaintiff's Motion for Reasonable Attorney's Fees and Costs is **ALLOWED** in the amount of $151,294.34.

Date: January 22, 2021

Beverly J. Cannone
Justice of the Superior Court