

Plaintiffs have sought in their complaint a declaration from this Court that Defendant failed to

comply with certain notice provisions contained in G.L. c. 140, § 32R which Defendant was required to provide to residents prior to effectuating the sale of the communities. Plaintiffs further seek a judgment declaring that each community properly exercised their right of first refusal under G.L. c. 140, § 32R. Defendant opposes the Motion and takes the position that it fully complied with the notice requirements of G.L. c. 140, § 32R. Defendant further argues that Plaintiffs failed to timely respond to the notice of sale and that as a result, forfeited their right to exercise their right of first refusal pursuant to the statute. Plaintiffs further seek a permanent injunction ordering Defendant to fulfill its obligations under G.L. c. 140, § 32R and to negotiate with each Plaintiff for the purchase and sale of each community.

Defendant and Intervenor Legacy Communities, Inc. each filed Oppositions to Plaintiffs' Motion. Parties agreed that there are no disputed material facts. After review of the summary judgment record, memoranda and arguments presented at oral argument, the Court finds as follows:

UNDISPUTED MATERIAL FACTS

Higgins is a Massachusetts corporation organized in 1969 for the stated purpose of dealing in new and used mobile homes and purchasing land upon which to operate mobile home parks. Sunset Acres Mobile Home Community ("Sunset") is located at 45 Washington Street, Plainville, Massachusetts. On or about May 24, 2019, the residents of Sunset formed a resident association known as Sunset Acres Resident Association Inc. ("Sunset Association"). Brookside Village Mobile Home Community ("Brookside") is located at 160 Washington Street, Plainville, Massachusetts. On or about May 24, 2019 the residents of Brookside formed a resident association known as Brookside Resident Association Inc. ("Brookside Association"). Sunset

and Brookside are licensed and regulated under the Massachusetts Manufactured Housing Act, G. L. c. 140, §§ 32A to 32S.

On or about February 6, 2019, Higgins received from Legacy Communities, LLC, ("Legacy") an unsolicited offer to purchase the Sunset and Brookside parks. On or about February 26, 2019, Higgins accepted Legacy's offer to purchase. On April 5, 2019, Higgins and Legacy executed a purchase and sale agreement for Legacy's purchase. In a letter dated April 17, 2019, Higgins notified the residents of each of the two communities of the proposed sale to Legacy. The residents of the two communities received the notice from Higgins between April 19, 2019 and April 21, 2019. The notice states, in pertinent part, as follows:

"Dear TENANT:

Pursuant to Mass. General Laws Chapter 140, Section 32R, please allow this letter to serve as notice to each resident of Sunset Acres and Brookside Village that the owners of Sunset Acres and Brookside Village (Higgins MOBILE HOMES, Inc.) intend to sell all of the land upon which Sunset Acres is located at 45 Washington Street, Plainville, Mass. [sic] and Brookside Village located at 160 Washington Street, Plainville, Mass. [sic]

Please find enclosed a copy of Mass. General Laws Chapter 140, Section 32R which identifies your rights as a tenant under said Section.

Also enclosed please find Exhibit A detailing the terms of the Unsolicited Purchase and Sale Agreement (Sunset Acres and Brookside Village) for the purchase of the mobile home parks.

Exhibit A

PURCHASE PRICE: \$17,850,000.00 paid at closing (no financing contingency)

DEPOSIT: \$250,000 (\$100,000, non-refundable)

BUYER: Legacy Communities, LLC or its nominee

DUE DILIGENCE PERIOD: 45 Days

CLOSING DATE: 45th day following Buyer's delivery of Approval Notice

BROKERS: Marcus & Millichap

ESCROW AGENT: Chicago Title Insurance Company

PROPOSED USE: Buyer does not propose to change the present use of the mobile home parks, therefore M.G. L. Chapter 140, Section 32R(b) does not apply to this transaction.

Total number of units located in both mobile home parks equals 291 full hook-up mobile manufactured home sites.”

The notice did not notify the residents of either community of the amount of the purchase price of their individual community and did not provide the residents with a copy of the offer to purchase, or the purchase and sale agreement already signed by Higgins and Legacy.

On or about June 3, 2019, Plaintiffs delivered to counsel for Higgins and through certified mail a written notice of the intent to exercise their right of first refusal and included a request for specific information regarding the Legacy offer. On June 10, 2019, Higgins delivered the requested information to Plaintiffs. Plaintiffs provided a proposed purchase and sale agreement (“P&S”) to Higgins on July 22, 2019. Upon receipt of the proposed P&S, Higgins took the position that Plaintiffs failed to provide the proposed P&S within forty-five days of receipt of the April 17, 2019 letter, therefore their right of first refusal was forfeited. Plaintiffs filed the present action seeking a declaratory judgment as to its compliance with the statute.

SUBJECT MATTER JURISDICTION

Defendant Higgins addresses the question of subject matter jurisdiction in footnote 18 of its “Memorandum on G.L. c. 140, s. 32R” when it points out that G. L. c. 231, § 1 does not expressly confer subject matter jurisdiction in the Housing Court for the purposes of making declarations of right, duty, statute and other legal relations. Higgins further points out that the

expanded jurisdiction granted to the Housing Court pursuant to G. L. c. 185C, § 3 does not specifically mention G. L. c. 231, § 1. Although Higgins has not filed a motion to dismiss for lack of subject matter jurisdiction, Mass. R. Civ. P. 12 (h)(3) provides that “[w]henver it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Higgins has suggested that the court may lack subject matter jurisdiction therefore the court must address this issue even in the absence of a formal motion to dismiss.

Chapter 231A, § 1 provides in relevant part that “[t]he supreme judicial court, the superior court, the land court and the probate court . . .” shall have jurisdiction to declare the rights of parties. Higgins is correct that the statute does not explicitly confer subject matter jurisdiction upon the housing court; however the housing court's jurisdictional statute, G.L. c. 185C, § 3, makes it clear that the court's authority includes the power to declare the rights of parties pursuant to G.L. c. 231A with respect to matters that fall within the court's enumerated jurisdiction. The housing court's jurisdictional statute, G.L. c. 185C, § 3, provides in relevant part that the “housing court department shall have common law and statutory jurisdiction concurrent with the divisions of the district court department and superior court department of all . . . civil actions . . . concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used . . . as a place of human habitation and the possession . . . or use of any particular housing accommodations. . . In all matters within their jurisdiction, the divisions of the housing court department shall have all the powers of the superior court department including the power to grant temporary restraining orders and preliminary injunctions as justice and equity may require.”

As the present matter involves the question of compliance with General Laws c. 140, §§ 32A-32R, the Court looks to the statute and the legislative intent behind the statute in order to make a determination as to whether the question before the court falls within the subject matter jurisdiction of the housing court. The Court in *Greenfield Country Estates Tenants Association Inc. v. Michael A. Deep, trustee, & another*, 423 Mass. 81 (1996) provided an analysis of the General Laws c. 140, s.s. 32A-32R as follows:

“General Laws c. 140, §§ 32A-32R, establishes a statutory scheme intended to protect tenants of manufactured housing communities, formerly known as mobile home parks. Both the Legislature and the courts of the Commonwealth have recognized that manufactured housing communities provide a viable, affordable housing option to many elderly persons and families of low and moderate income, who are often lacking in resources and deserving of legal protection.” See *Id.* citing *Commonwealth v. Gustafsson*, 370 Mass. 181, 190-191 (1976); *Commonwealth v. DeCotis*, 366 Mass. 234, 238 (1974).

“The goal of the statute is to avoid discontinuances of manufactured housing communities and to ensure that tenants of such communities are not left at the peril of their landlords due to a practical inability to relocate a manufactured housing unit.... Unless mobile home owners receive further protection in relocating their homes upon mobile home park discontinuances than the law now affords, this increasing shortage of mobile home park sites and increasing cost of relocation will generate serious threats to the public health, safety, and general welfare of the citizens of the commonwealth, particularly the elderly and persons of low and moderate income. St. 1986, c. 317, s. 1. The statute enables residents of manufactured housing communities to purchase the land on which their homes exist and thus avoid discontinuances of

manufactured housing communities. This creates stability for those homeowners and promotes continued existence of affordable housing." *Id. at 83.*

The Court finds that the legislative intent of the statute, to protect serious threats to the public health, safety and general welfare of tenants in mobile homes, goes to the question of subject matter jurisdiction. As the housing court has jurisdiction to issue declaratory orders on matters directly or indirectly related to the health, safety and welfare of residential tenants, the Court finds that the present matter falls within the jurisdiction of the housing court. The housing court department has extensive experience and expertise in matters pertaining to the provision of affordable housing for elders and persons of low and moderate income. The owners failure to comply with the relevant sections of G.L. c. 140 could implicate the ability of the Plaintiffs to exercise their right of first refusal which would have a direct impact on their welfare and safety. The elimination of the option to purchase could additionally place at risk their ability to retain their tenancies. Therefore, a judicial action seeking a declaration of the rights of the parties with respect to the purchase of the property falls squarely within the parameters of the housing court's subject matter jurisdiction. Accordingly, Plaintiffs may proceed with their claim for a declaratory judgment under G.L. c. 231A.

STANDARD

To prevail on a motion for summary judgment, the moving party must demonstrate with admissible evidence, based upon pleadings, depositions, answers to interrogatories, admissions to file, and affidavits, that there are no genuine issues as to any material facts. Additionally, the moving party must establish that they are entitled to judgment as a matter of law. Mass. R. Civ. P. 56 (c). *Community National Bank v. Dawes*, 369 Mass. 550, 553-556 (1976). Once the

moving party meets its initial burden of proof, the burden shifts to the non-moving party “to show with admissible evidence the existence of a dispute as to material fact.” *Godbout v. Cousens*, 396 Mass. 254, 261 (1985). “A party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if he demonstrates, by reference to material described in Mass R. Civ. P. 56 (c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of that party’s case.” *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). To defeat summary judgment the non-moving party must “go beyond the pleadings and by [its] own affidavits, or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 714. The party opposing summary judgment “cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment.” *LaLonde v. Eissner*, 405 Mass. 207, 209 (1976). Further, the non-moving party cannot meet [his] burden solely with “vague and general allegations of expected proof.” *Community National Bank v. Dawes*, *supra* at 554; *Ng Brothers Construction, Inc. v. Cranney*, 436 Mass. 638, 648 (2002) (“[a]n adverse party may not manufacture disputes by conclusory factual assertions; such attempts to establish issues of fact are not sufficient to defeat summary judgment”).

DISCUSSION

As stated above, G. L. c. 140, §§ 32A-32R, “establishes a statutory scheme intended to protect tenants of manufactured housing communities, formerly known as mobile home parks.” *See Greenfield supra*. One manner in which the statute provides protection to tenants is by affording them the right to notice of an owner’s intent to sell the property and to provide tenants

with information regarding a bona fide offer of purchase when received by a third party. G. L. c. 140, § 32R(a) states: "A manufactured housing community owner shall give notice to each resident of the manufactured housing community of any intention to sell or lease all of part of the land on which the community is located for any purpose."

G. L. c. 140, § 32R(b) requires owners to provide specific information in a notice to residents under two specific set of circumstances. "Before a manufactured housing community may be sold or leased for any purpose that would result in a change of use or discontinuance, (emphasis added) the owner shall notify each resident of the community, with a simultaneous copy to the attorney general, the director of housing and community development, and the local board of health, by certified mail of any bona fide offer for such a sale or lease that the owner intends to accept. Before any other sale or lease other than the leases of single lots to individual residents, the owner shall give each resident such a notice of the offer only if more than fifty percent of the tenants residing in such community or an incorporated home owners' association or group of tenants representing more than fifty percent of the tenants residing in such community notifies the manufactured housing community owner or operator, in writing, that such persons desire to receive information relating to the proposed sale or lease (emphasis added). Any notice of the offer required to be given under this subsection shall include that price, calculated as a single lump sum amount which reflects the present value of any installment payments offered and of any promissory notes offered in lieu of cash payment or, in the case of an offer to rent, the capitalized value of the annual rent and the terms and conditions of the offer."

Finally 32R(c) allows residents to purchase the community if they comply with certain

requirements. "A group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase, in the case of a third party bona fide offer to purchase that the owner intends to accept..., the said community for purposes of continuing such use thereof, provided it (1) submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved that purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under subsection (b) of this section...."

The parties have asked the Court to determine whether Plaintiffs, with their submission to Defendant of a proposed purchase and sale agreement on July 22, 2019, complied with their requirements under 32R(c)(2) to provide the P&S within forty-five days of receipt of notice of the offer made under subsection 32R(b). In order to determine compliance, the Court must first determine whether Defendant provided notice of the offer under subsection 32R(b) and if it did, when notice was provided.

Plaintiffs argue that following their receipt on June 10, 2019 of information required to be included in 32R(b) notices, that they provided a proposed P&S on substantially the same terms as Legacy within forty-five days of receipt of the information from Defendant. Plaintiffs argue that the Defendant's April 17, 2019 letter did not trigger the tolling of the forty-five day period as it did not comply with the notice requirements contained in 32R(b) as it failed to include, among other things, a purchase price for each community and did not include the terms and conditions of the Legacy offer as required by 32R(b).

Defendant argues that Higgins complied with all notice requirements by providing the April 17, 2019 notice pursuant to 32R(a) and, despite its position that it was not required to provide a 32R(b) notice, did provide the information required by 32R(b) in its Exhibit A attached to the notice. Defendant argues that the forty-five day period contemplated in 32R(c) began to toll upon the tenants receipt of the April 17, 2019 letter. Defendant argues that Plaintiffs failed to provide a proposed P&S pursuant to 32R(c)(2) within forty-five days of the April 17, 2019 letter and that as a result, their right of first refusal terminated. Defendant further argues that the statute contemplates two forty-five day periods as 32R(a) requires the owner to send the 32R (a) notice at least forty-five days before the sale occurs and 32R(c)(2) requires tenants who wish to purchase the property to submit a proposed purchase and sale agreement to the owner within forty-five days of receipt of the 32R(b) notice. Defendant argues that the two distinct forty-five day periods are significant as ¶2 of 32R(c) states that failure of the residents to submit a P&S with the first forty-five day period (emphasis added) shall have their right of first refusal terminated. Defendant argues that the first forty-five day period began to toll after the April 17, 2019 letter was delivered.

In order to make a determination as to compliance with the statute, the Court must look at the plain meaning of the language of the statute. “A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.” *Sullivan v. Town of Brookline*, 435 Mass. 353, 360 (2001). The Court has held the “a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language...” *Commissioner of Revenue v. Dupee*, 423 Mass. 617, 620

(1996) quoting *Industrial Fin. Corp. v. State Tax Comm*, 367 Mass. 360, 364 (1975). The Court has an obligation “to give ambiguous, imprecise, or faulty drafted statutes a reasonable construction, with the primary goal of construing the statute to carry out the legislative intent and confer upon the statute as a whole an internal consistency.” *Bartlett v. Greyhound Real Estate Fin. Co.*, 41 Mass. App. Ct. 282, 286 (1996). The language of the statute is the principle source of insight into legislative intent. *Hoffman v. Howmedica, Inc.*, 373 Mass. 32, 37 (1977). If a plain meaning emerges for a disputed statutory term, the Court must respect that meaning. It cannot deviate from, or alter, that plain meaning by expedient enlargement or restriction. *Commissioner of Correction v. Superior Court*, 446 Mass. 123, 124 (2006).

The Court must first determine whether Higgins was required at any time to comply with the notice requirements enumerated in 32R(b).

The Court finds that the plain language in 32R(a) makes clear that an owner must provide notification to tenants of any intention to sell or lease the property for any purpose within forty-five days of the sale. The Court also finds that 32R(a) does not specify what must be included in the content of the notice. The Court further finds that the plain language of 32R(b) makes clear that the notice must include specific information, such as the price and the terms and conditions of the sale, under two sets of circumstances— if there is going to be a change or discontinuance of use or when the owner is informed that more than fifty percent of the residents wish to receive information relating to the proposed sale.

As the present action involved an unsolicited offer to purchase, there would have been no way for Higgins to determine, within forty-five days of the sale, whether the notice requirements under (a) or (b) applied. Further, at that point in time (forty-five days prior to the sale), there was

no suggestion in the summary judgment record that the tenants had any knowledge of the owners intent to sell the property which would have caused them to take any action if they wished to purchase the community. As a result, the owner had no reason to believe and no knowledge that more than 50% of the residents wished to receive information required to be included in the notice by 32R(b). The Court finds that the owner's decision in April 2019 to provide a notice under 32R(a) was reasonable at that time as Higgins had no notice of the residents interest in exercising their right of first refusal. Once the Plaintiffs notified Higgins in their June 3, 2019 letter of their interest in exercising their right of first refusal and requested information relevant to the sale, however, Higgins was required to comply with 32R(b). There is no dispute that Higgins provided the requested information in its June 10, 2019 letter. Once Plaintiffs received the June 10, 2019 letter, the Court finds that the forty-five day period within which they were required to take steps to exercise their right to purchase under 32R(c) began to toll. There is no dispute that Plaintiffs exercised those rights within that forty-five day period.

Higgins claims that although it was not required to comply with 32R(b) when sending the April 17, 2019 notice, the inclusion of the Exhibit "A" to the April notice complied with the requirements of 32R(b), the receipt of which would trigger the forty-five day tolling of the residents right of first refusal. Plaintiffs argue that as a result of Defendant's failure to provide a separate purchase price for each community, it failed to comply with its statutory obligation to provide residents with the "price" of the community pursuant to 32R(b) in the April 17, 2019 notice and as a result, the notice was deficient. Defendant argues that it was not obligated to provide an individual purchase price for each community but if Plaintiffs required that information, they could have simply divided the purchase price in half.

The Court finds that if it were to treat the April notice as the 32R(b) notice, that notice failed to comply with the requirements of 32R(b) as it failed to provide the price of each community. Based on the plain meaning of the word “price” and on the legislative intent of the G.L. c. 140, §§ 32A-32R, to allow tenants a right to purchase their communities if a sale is pending, the Court can only find that Higgins failed to comply with the statute through its failure to provide the individual purchase price for each community. The Court finds that there is no suggestion in the record that the two Plaintiff communities are related in any way or are in some way one entity. Higgins failure to include an individual purchase price for each community is fatal as it obscures the ability of each community to determine whether to exercise the right of first refusal and, if they wished to exercise that right, how much to offer in order to provide substantially equivalent terms to the Legacy offer.

The Court finds that Defendant’s suggestion at the hearing that the Plaintiffs could have figured out the purchase price for their community by simply doing the math and dividing the purchase price in half is unreasonable. There is nothing in the summary judgment record to suggest that Plaintiffs had that ability to determine that the properties were of equal value.

Based on the above, the Court finds that Higgins failed to comply with the plain language of 32R(b) in its April 17, 2019 notice when it failed to include the price of each community. As such, the Court shall not consider the April 17, 2019 letter the 32R(b) Notice and the tolling of the forty-five day period shall not be computed as having commenced upon tenants receipt of the April 17, 2019 notice.

Defendant’s final argument in support of its position that Plaintiffs failed to submit a P&S within the requisite forty-five day period centers on use of the word “first” in the second

sentence of ¶2 of 32R(c) which states: "Failure of the residents to submit such a purchase and sale agreement or lease within the first forty-five day period, to obtain a binding commitment for financing within the additional ninety day period or to close on the purchase or lease within the second ninety-day period, shall serve to terminate the rights of such residents to purchase or lease the manufactured housing community." Defendant argues that use of the word "first" before "forty-five day period" suggests that there are two forty-five day periods and argues that the first forty-five day period is the period defined in 32R (a) and the second is the period defined in 32R (b). Defendant argues that Plaintiffs did not provide the propose P&S within forty-five days of the first forty-five day period, therefore their right to purchase the communities terminated.

The Court finds that the forty-five day period contemplated in 32R(a) refers to the obligation of the owner to provide the 32R(a) notice forty-five days prior to the sale. 32R(a) does not specify any obligations of the residents nor does it connect the forty-five days to anything other than the time period within which the owner must send the 32R (a) notice. 32R(b) is the first subsection of 32R which addresses any obligations of the residents. 32R(b) provides that residents must notify owners if they wish to receive information relevant to the sale. 32(c) provides further specific obligations which residents must comply with if they wish to purchase the property including that residents shall have the right to purchase if they submit a proposed purchase and sale agreement on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under section (b) of this subsection.

When looking at the statute as a whole in order to determine an internal consistency pursuant to *Bartlett, supra*, there is no way to connect the reference to forty-five days in 32R(a) with the forty-five day period specified in 32R(c)(2). There is nothing ambiguous or inconsistent

in the second sentence of the second paragraph of 32R (c) if it is read in conjunction with the entirety of 32R(c). The second sentence can only refer to the forty-five day period in 32R(c)(2) as the remainder of the sentence refers to the time limitations in 32R(c)(3) and 32R (c)(4). “A group or association of residents representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase, in the case of a third party bona fide offer to purchase that the owner intends to accept..., the said community for purposes of continuing such use thereof, provided it (1) submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved that purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement on substantially equivalent terms and conditions within forty-five days of receipt of notice of the offer made under subsection (b) of this section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and same agreement or lease and, (4) closes on such purchase or lease within an additional ninety days after the end of the ninety-day period under clause (3).”

There is no reference whatsoever in 32R(c) to 32R(a). The Court cannot “deviate from, or alter, that plain meaning by expedient enlargement or restriction.” *See Commissioner of Correction supra*. If the Court were to accept Defendant’s argument and somehow connect ¶2 of 32R(c) to 32R(a) the Court would have to enlarge the meaning of 32R(c)(2) and deviate from the intent of the statute which is to allow tenants of manufactured homes the opportunity to purchase their mobile home communities if the communities are for sale. The plain language of the statute makes clear when residents are obligated to exercise their rights. Accepting Defendant’s

argument that there are two forty-five day periods that residents would be obligated to observe would make it impossible for residents to determine when to exercise their rights and would result in the creation of an unintended inconsistency in the statute. The plain language of 32R(c)(2) makes clear that residents shall have the right to purchase if they submit a proposed purchase and sale agreement on substantially equivalent terms and conditions “within forty-five days of receipt of notice of the offer made under section (b) of this subsection.” The Court finds that the forty-five day period within which Plaintiffs had the right to exercise their right of first refusal began to toll on June 10, 2019, the date on which Higgins provided the requested information to residents pursuant to 32R(b).

ORDER

Based on the above, the Court **ALLOWS** Plaintiffs’ Motion for Summary Judgment in their favor. The Court declares that Defendant failed to comply with the notice provisions contained in G.L. c. 140, § 32R(b) in its April 17, 2019 notice. The Court further declares that each Plaintiff timely exercised the right of first refusal under G.L. c. 140, § 32R in the July 22, 2019 letter and submission of a purchase and sale agreement to Higgins. The Court further allows Plaintiffs’ request for a permanent injunction requiring Defendant to fulfill its obligations under G.L. c. 140, § 32R by negotiating with each Plaintiff for the purchase and sale of each community.


MARIA THEOPHILIS
ASSOCIATE JUSTICE

Date: January 31, 2020

cc: Carey H. Smith, Esq.
Frank C. Corso, Esq.
Robert Kraus, Esq.