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NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2084CV02447

NOTICE SENT
6/18/2021
W.E.M.E.&D.
K.S.
T.M.W.
W.M.
J.P.W.
J.A.M.

CATHERINE PETERS

vs.

BOSTON PROPERTIES, INC. & others[1]

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Catherine Peters (Peters or Plaintiff) seeks relief for discrimination in a place of public accommodation and violation of her civil rights.[2] Those claims stem from an incident that occurred in December 2017 when Peters was thrown violently to the floor in the pedestrian mall area of the Prudential Center in Boston by security officers employed by Allied Universal Security Services, LLC (Allied) and held face down for twenty minutes as the officers applied pain compliance techniques to her body and onlookers pleaded with the officers to release her. Peters claims the officers, and by extension Allied, and the owners and operators of the Prudential Center discriminated against her on the basis of race and gender. (sc)

[1] Boston Properties Limited Partnership; BP Prucenter Acquisition LLC; Allied Universal Security Services, LLC; Jordan Kimkaran; Tyler Ward; Noemi Marquez; Linh Nguyen; Dennis O'Connor; Jane / John Doe Allied Universal Security Officers 1-5. Defendant Tyler Ward is not represented in connection with the instant Motion.

[2] Plaintiff also asserts claims of false imprisonment, assault and battery, and intentional infliction of emotional distress against the individual defendants and their employer based on a theory of vicarious liability. Those claims are not the subject of the instant motion. In addition, three individual defendants moved to dismiss for failure to make proper service of process, but the Plaintiff was granted an extension in time to serve those defendants, who have since withdrawn that part of the motion.

Defendants answered the Complaint and filed the instant Motion for Judgment on the Pleadings (Motion). Boston Properties Limited Partnership (BPLP), BP Prucenter Acquisition, LLC (BP Prucenter) and four of the named individual defendants[3] move to dismiss Count I because they were not named in the Charge Peters filed with the Massachusetts Commission Against Discrimination (MCAD). Boston Properties, Inc. (BP Inc.), BPLP, BP Prucenter, Allied, and the same four individual defendants also move to dismiss Count II, violation of the Massachusetts Civil Rights Act (MCRA) because that claim was not asserted in the Charge. After hearing and review, the Motion is **DENIED**.

BACKGROUND

A. Factual Background

I accept as true the following factual allegations in the Complaint. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 636, 625 n.7 (2008). BP Prucenter owns the Prudential Center; BPLP is the managing member of BP Prucenter; BP Inc. is the general partner of BPLP (together, the Prudential Center Defendants). The Prudential Center Defendants engaged Allied to provide security services at the Prudential Center.

On December 8, 2017, Peters, a twenty-two-year-old African American female, was visiting Boston from New Jersey. She was on a date with a white male at the Prudential Center at around 11:30 p.m. She and her companion walked through the mall, arriving at the pedestrian area in the part of mall referred to as Hynes Court. Peters and her date entered a closed Ben & Jerry's vendor kiosk.

Five security officers were on duty providing security to the Prudential Center that evening: defendants Kimkaran, Ward, Marquez, Nguyen, and O'Connor. After Peters and the white male exited the kiosk, Kimkaran, Nguyen and / or Marquez demanded their identification. Peters' white male companion refused to provide his

[3] Jordan Kimkaran, Noemi Marquez, Linh Nguyen, and Dennis O'Connor.

identification, argued with the officers, walked away, and eventually exited the Prudential Center without being detained by the officers.

Peters provided her identification to the officers. When she asked for it back, the officers refused to give Peters her identification. One held it out of reach in a taunting manner. When Peters reached for her identification, one or more of the officers grabbed at and pushed Peters on her shoulder and chest. One officer then put Peters' identification into a trash receptacle. When Peters ran to the receptacle to retrieve her identification, the officers grabbed her from behind and threw her to the floor causing the receptacle to tip over and spill its contents. Kimkaran, Nguyen, Ward and Marquez then pinned Peters face down on the floor near the trash in the public pedestrian area of the mall. Peters was wearing a dress and tights and, as she lay pinned, her dress was flipped up exposing her buttocks. Peters' buttocks remained exposed until an officer adjusted her dress ten minutes after she was initially pinned down.

While she was pinned on the ground, officers pushed on Peters' back making it hard for her to breathe. Another officer restrained her legs and arms. Peters, who suffers from asthma, was afraid that she would have an asthma attack and be unable to breathe. To prevent struggling, an officer forcefully bent Peters' wrists backwards causing Peters' significant pain. Peters begged the officers to release her wrists. One officer referred to Peters by the "N" word.

During these events, Rabbis for the Union for Reform Judaism, who had been attending a convention held at the Hynes Convention Center, entered the Prudential Center and saw what was happening. At least two onlookers took video recordings. Many expressed concerns for Peters' health and safety and protested the officers' treatment. The officers told the onlookers to mind their own business and leave. The onlookers continued to protest the treatment of Peters. The female security officer can be seen on the video sarcastically asking the onlookers if they were trying to get a picture of Peters' "butt."

After more than twenty-three minutes during which Peters had been pinned face down on the floor and subjected to pain compliance techniques before a crowd of onlookers, Boston Police Department (BPD) officers arrived. The officers released Peters; BPD officers helped Peters up; and, after talking with her, BPD officers allowed Peters to leave. No criminal charges were ever filed against Peters.

B. Case Before the MCAD

Resolution of the Motion requires considering the issues, parties, charges, and procedure before the MCAD.[4] On October 2, 2018, Peters filed a verified Charge of Discrimination (Charge) with the MCAD. Peters named as respondents BP, Inc., The Prudential Center c/o Boston Properties, Allied and John / Jane Doe Allied Universal Security Officers. She identified Boston Properties as the "owner of the Shops at the Prudential Center," which she described as "an enclosed shopping area consisting of shops and restaurants, connected by a pedestrian mall and common areas at 800 Boylston Street in Boston."

The facts alleged in the Charge are consistent with the above description of the events except that the Charge cites to a publicly available YouTube video taken of the incident. I have reviewed the approximately twenty-minute YouTube video referenced in the Charge.[5] Peters can be heard yelling in pain. Onlookers can be heard yelling at the officers to assist Peters. One onlooker asks the officers to make sure Peters was still breathing. All the officers involved in the incident are clearly visible in the video recording and could easily be identified by their employer.

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[4] The parties do not dispute that I can consider the Charge in connection with the Motion as well as other filings and relevant procedural aspects of the case before the MCAD.

[5] The Court can consider the Charge and YouTube video as items incorporated by reference into the Complaint. See Rosenberg v. JPMorgan Chase & Co., 487 Mass. 403, 408 (2021) (in reviewing motion to dismiss, court may consider extrinsic documents plaintiff relied upon in framing her complaint).

On August 19, 2019, the MCAD issued a finding of probable cause against BP Inc., Allied, the Shops at the Prudential Center, and Jane / John Doe Allied Universal. On October 25, 2019, Peters filed a Motion to Amend her Charge. Peters sought to remove the Shops at the Prudential Center, add BPLP and a John Doe LLC as respondents, and substitute the five individual defendants named herein for the John and Jane Doe respondents. Respondents opposed that motion. On February 21, 2020, Peters filed a Supplemental Motion to Amend her Charge to substitute BP Prucenter for John Doe LLC, alleging that she had only recently been informed that BP Prucenter was the entity that owns the Prudential Center. The Motion to Amend was denied on August 12, 2020. On October 26, 2020 Peters withdrew her Charge before the MCAD to file this case in Superior Court.

DISCUSSION

I. Discrimination in A Place of Public Accommodation

The public accommodations law, G. L. c. 272, § 98 prohibits discrimination based on "race, color, religious creed, national origin, sex, gender identity, sexual orientation, . . . deafness, blindness or any physical or mental disability or ancestry" in connection with "admission of . . . [or] treatment in any place of public accommodation[.]" The statute provides as well that "[a]ll persons shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement subject only to the conditions and limitations established by law and applicable to all persons. This right is recognized and declared to be a civil right." Id. The statute further provides that a person aggrieved by violation of the statute shall be entitled to recover "such damages as are enumerated in section five of chapter one hundred and fifty-one B[.]" Id.

Defendants do not and have not argued that the facts described in the Complaint, assumed to be true as they must be at this stage of the case, do not state a claim for relief for violation of the statute. Rather, BPLP, BP Prucenter, and four of the

named individual defendants argue that Peters' claim for discrimination in a place of public accommodation must be dismissed because they were not named in Peters' MCAD Charge, and therefore Peters failed to exhaust her administrative remedies, which bars her claim against them. I disagree.

A. Exhaustion of Administrative Remedies

To decide whether Peters can proceed against BPLP, BP Prucenter and the individual defendants, the first question I must answer is whether a person aggrieved by discrimination in a place of public accommodation must file a charge with the MCAD and exhaust her administrative remedies. I conclude that the answer is no.

The Legislature has charged the MCAD with primary responsibility for carrying out the Commonwealth's "overriding governmental policy proscribing various types of discrimination" through the procedures set forth in Chapter 151B. Warfield v. Beth Israel Deaconess Med. Ctr., Inc., 454 Mass. 390, 398 (2009), quoting Massachusetts Bay Transp. Auth. v. Boston Carmen's Union, Local 589, 454 Mass. 19, 26 (2009); see G. L. c. 151B, § 3. Those procedures instruct a person aggrieved by a violation of the Commonwealth's anti-discrimination law to "file with the MCAD 'a verified complaint in writing' . . . 'set[ting] forth the particulars thereof and contain such other information as may be required by the [MCAD].'" Pelletier v. Somerset, 458 Mass. 504, 514 (2010), quoting G. L. c. 151B, § 5. "The purpose of the administrative filing is '(1) to provide the MCAD with an opportunity to investigate and conciliate the claim of discrimination; and (2) to provide notice to the defendant of potential liability.'" Id., quoting Cuddyer v. Stop & Shop Supermarket Co., 434 Mass. 521, 531 (2001).

Although the public accommodations law appears in Chapter 272 of the General Laws, it is integrated into Chapter 151B insofar as G. L. c. 151B, § 5 provides that "[a]ny person who is 'aggrieved' by an alleged violation of the public accommodation statute may file a complaint with the Massachusetts Commission Against Discrimination (commission), which will investigate, conciliate, and adjudicate the matter under the

procedures set forth in c. 151B and, where appropriate, order affirmative relief calculated to effectuate the goal of the statute." Currier v. National Bd. of Med. Examiners, 462 Mass. 1, 18 (2012), G. L. c. 272, §§ 92A, 98, 98A; G. L. c. 151B, §§ 5, 9. In Currier, the Supreme Judicial Court (SJC) addressed an alleged violation of the public accommodations law for failure to provide the plaintiff, a nursing mother, additional time to express breastmilk while taking the test for a medical license. To resolve whether the "statutory protections extend to situations where services are provided that do not require a person to enter a physical structure[,]" id. at 18-19, the Court considered the MCAD's construction of the definition of a place of public accommodation set forth in G. L. c. 272, § 92A, noting that MCAD's interpretation was entitled to deference in view of the "integration of the [public accommodation] statute into c. 151B." Id. at 18-19 ("Legislature essentially delegated to the commission the authority in the first instance to interpret the statute and determine its scope.").

After concluding that the National Board of Medical Examiners was subject to the public accommodations law, the Court then held that the plaintiff was entitled to summary judgment on her claim even though she had *not* proceeded before the MCAD prior to filing suit in Superior Court. Currier, 462 Mass. at 4. Currier thus supports the conclusion that a plaintiff is not required to proceed first before the MCAD and exhaust her administrative remedies when alleging discrimination in a place of public accommodation.

Further, in 2018 the U.S. District Court for the District of Massachusetts (Mastroianni, J.) construed Chapter 151B and determined that plaintiffs are not required to bring their claims of discrimination in a place of accommodation to the MCAD. CapoDiCasa v. Ware, No. 17-30079-MGM, 2018 WL 3966303, at *3 (D. Mass. Aug. 17, 2018). After careful review, I agree with the Plaintiff that the CapoDiCasa Court correctly interpreted Chapter 151B.

First, the exclusivity provision of Chapter 151B, section 9, mandates that a charge of discrimination with the MCAD is the exclusive remedy only "as to the acts declared unlawful by section 4[.]" G. L. c. 151B, § 9 ("[A]s to acts declared unlawful by section 4, the administrative procedure provided in this chapter under section 5 shall, while pending, be exclusive."). Section 9 does not provide that the administrative procedures of Chapter 151B are the exclusive remedy for violation of the public accommodations law. Second, the acts declared unlawful by section 4, which are subject to section 9's exclusivity provision, are "discrimination by private and public employers against employees or prospective employees; by those in the insurance or bonding business, by persons in the mortgage business and persons in the business of selling or renting real estate." CapoDiCasa, at *3; see also G. L. c. 151B, § 4. Section 4 does not address discrimination in public accommodations. Third, the administrative procedures provision of Chapter 151B, section 5, states that "[t]he institution of proceedings under this section, or an order thereunder, shall not be a bar to proceedings under said sections ninety-two A, ninety-eight and ninety-eight A [the public accommodations law] . . . ." Accordingly, I agree that, "[a]s to claims brought under § 4 of 151B, the administrative procedures set out in § 5 provide the exclusive remedy while such proceedings are pending," but that, as to claims for violation of the public accommodations law, the procedures in G. L. c. 151B, § 5, which require an aggrieved person to file a complaint with the MCAD, are not exclusive. CapoDiCasa, at *3. On that basis, Plaintiff's claim for violation of G. L. c. 272, § 98 is not barred as to the defendants who were not named in her MCAD Charge.

Defendants rely on Borne v. Haverhill Golf & Country Club, Inc., 58 Mass. App. Ct. 306, 311 (2003) in which the Court, addressing a sex discrimination claim in connection with a golf course, stated that "General Laws c. 151B, § 5, requires persons who claim that they have suffered unlawful discrimination to file a complaint, first, with the Massachusetts Commission Against Discrimination (MCAD)." However, the

Borne Court did not analyze the specific statutory provisions in chapter 151B described above that carve out exceptions for claims alleging violation of the public accommodations law. Defendants rely as well on three decisions from the U.S. District Court for the District of Massachusetts, and one from the Superior Court. See Quarterman v. Springfield, 716 F. Supp. 2d 67, 77 (D. Mass. 2009) ("Massachusetts law requires that all of Plaintiffs' state-law discrimination claims be brought before the MCAD before a lawsuit may be filed."); Griffiths v. Hanover, No. 1:11-CV-12115-JLT, 2012 WL 3637791, at *4 (D. Mass. Aug. 21, 2012) ("Because the Public Accommodations Statute affords relief subject to Mass. Gen. Laws ch. 151B § 5, actions brought under the Public Accommodations Statute are subject to ch. 151B § 5's nonwaiveable requirement that a plaintiff file a complaint with the MCAD before filing a civil suit."); Do Corp. v. Stoughton, No. Civ.A. 13-11726-DJC, 2013 WL 6383035, at *14 (D. Mass. Dec. 6, 2013), citing Griffiths, supra, at *4 & n.39 (same); Chaudhary v. Taco Bell Corp., No. 952093, 1995 WL 1312539, at *3 (Mass. Super. Ct. Dec. 11, 1995) (noting that "the SJC interpreted the exclusivity provision of c. 151B to preclude all state statutory claims of employment discrimination where the statute of limitations has run on the plaintiff's MCAD complaint.").[6] But, as in Borne, those cases also do not address the specific statutory

[6] Both Griffiths and Do Corp. cite East Chop Tennis Club v. Massachusetts Comm'n Against Discrimination, 364 Mass. 444 (1973), for the proposition that a person aggrieved by a violation of the public accommodations law *must* bring a claim before the MCAD and exhaust administrative remedies before bringing an action in Superior Court. But East Chop Tennis Club did not address that issue. Rather, in East Chop Tennis Club, the respondent tried to short circuit the MCAD proceeding when it filed a Superior Court action seeking a "declaratory decree that it is not a public accommodation within the purview of G. L. c. 272, § 92A, which prohibits certain types of discrimination in such facilities, and a permanent injunction restraining the [MCAD] from continuing proceedings against the club and its officers." Id. at 444-445. The Court noted that, as the respondent, the Tennis Club had the right to seek judicial review of any MCAD decision pursuant to G. L. c. 151B § 6 and subject to the review procedure established in G. L. c. 30A, § 14(8). Id. at 447-448. But, the Court concluded,

language in G. L. c. 151B, § 9 providing exclusivity before the MCAD only for claims declared unlawful under section 4, or the language in G.L. c. 151B, § 5 that an MCAD claim "shall *not* be a bar to proceedings under [the public accommodations law]"(emphasis added). Further, Chaudhary involved a claim of employment discrimination and the SJC and Appeals Court cases it relied upon addressed *employment* discrimination, which, of course is declared unlawful in section 4. See Chaudhary, 1995 WL 1312359, at *2, citing Charland v. Muzi Motors, Inc., 417 Mass. 580, 584 (1994) (employee alleging age discrimination precluded from bringing subsequent claim under Massachusetts Equal Rights Act) and Mouradian v. General Electric Co., 23 Mass. App. Ct. 538, 543 (1987) (plaintiff alleging age discrimination barred from bringing a separate claim against the employer under the state Civil Rights Act). Indeed, in Charland, the Supreme Judicial Court concluded that, "[i]n view of the carefully crafted procedures of c. 151B, it is unlikely that, in adopting the equal rights act, the Legislature intended to create a parallel and competing alternative to dealing with the *problem of employment discrimination in the Commonwealth.*" Charland, 417 Mass.

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the tennis club "acted prematurely in bringing . . . suit for declaratory relief before exhausting its administrative remedies." Id. at 453. Therefore, rather than addressing whether a *complainant* must exhaust administrative remedies before the MCAD, East Chop Tennis Club addressed only whether a *respondent* may circumvent the administrative proceedings and procedure initiated an aggrieved person (permissible under section 5) by asking the Superior Court to intervene. The answer was no. If an aggrieved person chooses to proceed before the MCAD, a respondent may not circumvent the administrative process. The statute only permits complainants to bring a halt to proceedings before the MCAD and proceed in Superior Court. G. L. c. 151B, § 9 ("Any person claiming to be aggrieved by a practice made unlawful under this chapter or under chapter one hundred and fifty-one C, or by any other unlawful practice within the jurisdiction of the commission, may, at the expiration of ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than three years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive relief" in the Superior Court).

at 584 (emphasis added); see also Butner v. Department of State Police, 60 Mass. App. Ct. 461, 467 (2004) ("the exclusive first remedy *for a c. 151B violation* is a complaint to the MCAD") (emphasis added).

Based on my review of Chapter 151B, I conclude that a plaintiff alleging discrimination in a place of public accommodation is not required to exhaust the administrative remedies available under G. L. c. 151B, § 5. As a consequence, Count I need not be dismissed as against BPLP and BP Prucenter or the individual defendants because Peters was not required to proceed before the MCAD and the failure to name them as defendants in her Charge is of no consequence.

B. Failure to Name Defendants in MCAD Charge

If I am wrong on that question of statutory interpretation, Count I may still proceed against BPLP, BP Prucenter and the individual defendants because each, although not specifically named in the Charge, had notice and an opportunity to conciliate. Butner, 60 Mass. App. Ct. at 468 n.14, citing King, 46 Mass. App. Ct. at 374-375 (1999). In 2011, the Superior Court (Leibensperger, J.), after an exhaustive review of federal and state case law, articulated five factors to consider when determining whether a party not named before the MCAD may nevertheless be sued in court. They are whether:

> (1) his conduct was put at issue in the MCAD complaint, (2) he received notice of the charge, (3) he had an opportunity to, or did in fact, participate in the administrative proceedings, (4) his interests were closely aligned with the named respondent such that the named respondent would protect his interests, and (5) he would be unfairly prejudiced by the failure to name him as a respondent.

Haapanen v. Gold Medal Bakery, Inc., 28 Mass. L. Rptr. 583, 2011 WL 3524400, at *3 (Mass. Super. Ct. 2011); see also Aung v. Center for Health Info. & Analysis, No. 14-14402, 2016 WL 884878, at *2 (D. Mass. Mar. 8, 2016) (Saris, C.J.) ("So long as the individual is identified sufficiently in the MCAD charge regarding that individual's conduct, and if the individual was put on notice of the charge and had an opportunity

to conciliate, the individual may be included as a defendant in a later civil suit alleging Chapter 151B violations.").

As to the Prudential Center Defendants, although BPLP and BP Prucenter were not named in the Charge there is a sufficiently close nexus between them and the entity that was named, BP Inc., as it relates to the allegation of discrimination, that Count I may proceed. The Charge identifies the place of public accommodation at which Peters suffered discrimination as the Shops at the Prudential Center. There was no misunderstanding about where Peters suffered her alleged discrimination. She named BP, Inc. and the Prudential Center itself as respondents. She identified Boston Properties as the "owner of the Shops at the Prudential Center." The allegations of wrongdoing were clearly directed against the owner and / or operator of the Prudential Center.

Although Peters did not know that there were three layers of corporate entities involved in the ownership and operation of the Prudential Center, BP Inc. is the general partner of the Prudential Center's owner, BPLP, which is the managing member of the Prudential Center's operator, BP Prucenter. As its general partner, BP Inc. controls BPLP; as its managing member, BPLP controls BP Prucenter. They are all represented by the same counsel here, and apparently were all represented by the same counsel before the MCAD. Although not identified by their correct legal moniker, I conclude that BPLP and BP Prucenter were, through their relationship with BP Inc. which ultimately controls both entities, sufficiently on notice of the charge at the MCAD. Further, BP Inc. certainly represented the interests of its closely related entities before the MCAD and there is no discernable prejudice to either BPLP or BP Prucenter in defending against the claim here. See also Massachusetts Comm'n Against Discrimination v. Schwartz, No. 96-BEM-2125, 2005 WL 483431, at *2 (2005) (corporations on constructive notice of charges where MCAD complaint was against their CEO and referred to corporation)

As to the individual defendants, Peters put their conduct directly at issue and cited to a YouTube video from which the individual officers could easily be identified by their employer, Allied, which was named in the Charge. "Just as the scope of the investigation before the MCAD is defined by what the MCAD reasonably may be expected to uncover, that scope may also be defined by what one might anticipate and expect that an employer, investigating in good faith a complaint of discrimination by one of its employees, would discover." Pelletier, 458 Mass. at 515 n.20 (2010). In investigating the Charge, Allied undoubtedly learned who the officers were who tackled, restrained, and applied coercive techniques to Peters allegedly on the basis of her race and gender. To defend itself, Allied undoubtedly represented the officers' interests. See King, 46 Mass. App. Ct. at 374-375 (factors relevant to whether party not named in administrative charge may be subject to civil action include "whether the interests of the named party are similar to those of the unnamed party; whether the absence of the unnamed party from the administrative proceedings would result in actual prejudice to the unnamed party; and whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party").

Finally, with respect to the Prudential Center Defendants and the individual defendants, the fact that Peters sought to amend her complaint to add them as respondents put them on notice and provided them with the opportunity to conciliate. See Preston v. Second Wind, Inc., 824 F. Supp. 2d 247, 252 (D. Mass. 2011) (noting that amending an MCAD complaint can place individual defendants on "notice of the possibility of a civil action against them.").

Considered in their entirety, the above facts – a close business relationship between the entities that own and or operate the Prudential Center, clear identification of the role of each defendant in the wrongful conduct, an attempted amendment naming the entities and individual defendants, and representation by the same counsel

– are sufficient to avoid the dismissal of defendants who were not named in Peters' MCAD Charge. See, e.g., Weston v. Middleborough, 14 Mass. L. Rptr. 323, 2002 WL 243197, at *4 n.2 (Mass. Super. Ct. 2002) (where town's gas and electric departments hired an investigator to investigate claims in MCAD complaint, failure to name the departments in MCAD complaint was not fatal to Superior Court action because there was "a sufficient nexus" between the departments and parties who were named in MCAD complaint and with whom the departments shared counsel, "to satisfy the court" the departments had "notice of the charge, and . . . an opportunity to participate in the defense and conciliation of the charge") (Brassard, J.); Turley v. Security Integration, Inc., 2001 WL 1772023, at *7 (Mass. Super. Ct. 2001) (where chairman of board and major stockholder of company read MCAD charge and attended hearing, plaintiff's failure to name him in MCAD complaint did not require entry of judgment in his favor on plaintiff's Superior Court claim) (Borenstein, J.); Commonwealth v. Aron, 13 Mass. L. Rptr. 542, 2001 WL 1174153, at *4 (Mass. Super. Ct. 2001) (strong relationship between parties named in MCAD complaint and unnamed party "was sufficient to establish that the conduct of [the unnamed party] was placed at issue in the [MCAD] complaint" and provided the unnamed party notice and "an opportunity to conciliate") (Cratsley, J.). Compare Swenson v. Buffalo Lodging Assoc., LLC, 20 Mass. L. Rptr. 39, 2005 WL 2541197, at *4 (Mass. Super. Ct. 2005) (dismissing Superior Court action against defendant who was not named in MCAD charge where body of MCAD charge did not allege that defendant was among those alleged to have discriminated against plaintiff and plaintiff failed to establish nexus between defendant and named parties) (Macleod-Mancuso, J.).

II. Massachusetts Civil Rights Act

The Massachusetts Civil Rights Act (MCRA) provides recovery for "[a]ny person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been

interfered with" by "threats, intimidation or coercion . . . . " G. L. c. 12, §§ 11H, 11I. The MCRA "like other civil rights statutes, is remedial. . . . [and] entitled to liberal construction of its terms." Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985). "To establish a claim under the act, 'a plaintiff must prove that (1) the exercise or enjoyment of some constitutional or statutory right; (2) has been interfered with, or attempted to be interfered with; and (3) such interference was by threats, intimidation, or coercion.'" Glovsky v. Roche Bros. Supermarkets, Inc., 469 Mass. 752, 762 (2014), quoting Currier, 462 Mass. at 12. For purposes of the MCRA, "a 'threat' consists of 'the intentional exertion of pressure to make another fearful or apprehensive of injury or harm'; 'intimidation' involves 'putting in fear for the purpose of compelling or deterring conduct'; and 'coercion' is 'the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.'" Glovsky, 469 Mass. at 763, quoting Haufler v. Zotos, 446 Mass. 489, 505 (2006).

As with Peter's public accommodations claim, Defendants do not and have not argued that the facts described in the Complaint, assumed to be true as they must be at this stage of the case, fail to state a claim for relief for violation of the MCRA. Instead, Defendants argue that the claim is barred because it was not included in Peters' MCAD charge. As set forth supra, I have found that Peters was not required to file an MCAD charge before filing the instant action, and therefore, her failure to assert an MCRA claim in the MCAD charge she opted to file anyway is not fatal to her MCRA claim in this action. However, even if I am wrong, a claim not specifically asserted before the MCAD may nonetheless proceed "[u]nder the 'scope of the investigation' rule" if "it is based on the acts of discrimination that the MCAD investigation could reasonably be expected to uncover." Pelletier, 458 Mass. at 514. Thus, if a plaintiff has met the administrative burdens of c. 151B, plaintiff may pursue other statutory remedies based on the same conduct.

Notice sent
6/18/2021
(sc)

Further, here, Peter's MCRA claim is not based solely on her public accommodations claim. Peters claims that additional civil rights protected by the MCRA – including the right to be free from an unreasonable seizure, excessive force and deprivation of property – were interfered with by force. Peters' MCRA claim survives on those bases.

ORDER

For the foregoing reasons, Defendants' Motion for Judgment on the Pleadings is **DENIED**.

Debra A. Squires-Lee
Justice of the Superior Court

June 15, 2021