

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
2384CV02779

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NATIONALIST SOCIAL CLUB (a/k/a NSC-131),
CHRISTOPHER HOOD, and LIAM MCNEIL,

Defendants.

**DEFENDANTS CHRISTOPHER HOOD AND NSC-131 REPLY TO
OPPOSITION TO MOTION TO DISMISS**

**I. THE MCRA IS ONE OF A NUMBER OF STATUTES WITH A SPECIFIC
VENUE REQUIREMENT**

The Commonwealth's Opposition is primarily based on the argument that G.L. Ch. 223, Sec. 5, the general venue statute for actions by the Attorney General, on its face allows the Attorney General to bring its actions in Suffolk County. G.L. Ch. 223, Sec 5 has been law since it was enacted in 1921 (See Exhibit 1 attached). The Massachusetts Civil Rights Act ("MCRA") with its more restrictive venue provision (G.L. Ch. 12, Sec. 11H) was enacted later in 1979.

The MCRA and its attendant venue requirement is not the only enactment by the Massachusetts legislature with a more restrictive venue provision for specific causes of action brought by the Attorney General. The Consumer Protection Act (enacted in 1967) also contains a similar venue provision – Ch. 93A, Sec. 4 – for actions brought by the Attorney General. That venue statute provides in pertinent part:

“Section 4. Whenever the attorney general ... may bring an action in the name of the commonwealth against such person ... The action may be brought in the superior

court of the county in which such person resides or has his principal place of business, **or the action may be brought in the superior court of Suffolk county with the consent of the parties** (emphasis supplied)

Under the plain language of this statute, the Attorney General may only bring an action under the Consumer Protection Act in Suffolk County with the consent of the parties.

The Attorney General argues that acts of the legislature like the MCRA and 93A with restrictive venue provisions specific to causes of action that became law well after the general venue statute are somehow still subject to G.L.Ch. 223, Sec. 5. In other words, the statutory language governing venue in the later statutes is mere window dressing that the Attorney General can disregard at will.

II. THE CASE LAW CITED BY THE PLAINTIFF DOES NOT SUPPORT THE ARGUMENT THAT VENUE REQUIREMENTS OF THE MCRA CAN BE IGNORED

The Attorney General relies upon several cases to circumvent the venue restrictions in G.L. Ch. 12, Sec. 11H. None of this authority is applicable to this matter.

The Attorney General cites to Planned Parenthood League of Mass. v. Blake, 417 Mass. 467, 479 (1994) for the proposition that MCRA claims that occur in multiple locations may be joined in a single action, and that is indeed what appears to have occurred in the Planned Parenthood matter. The problem is that the venue issue was not raised, discussed or decided in Planned Parenthood. A litigant like the Defendant in Planned Parenthood who waives venue rights or at least does not defend them hardly creates binding precedent against those who assert their rights.

The Attorney General next relies on Cormier v. Pezrow New England, Inc., 437 Mass. 302, 305 – 307 (2002) for the proposition that multiple violations of the MCRA occurring in multiple counties can be aggregated in one venue. Cormier, however, was an employment discrimination case where the dispute was over where the plaintiff's termination occurred. The Court in Cormier found that the single act of wrongful termination could, given the facts peculiar to that case, be construed to have occurred in several counties including Norfolk and Hampden. Therefore either could suffice to satisfy the requirement in G.L. Ch. 151B, Sec. 9 that the action be "brought in the superior or probate court for the county in which the alleged unlawful practice occurred."

Cormier involved one claim of wrongful termination based on age discrimination and the issue was where the cause of action for a single act arose. It did not involve either aggregating multiple claims from different alleged violations, or a choice of venue that did not satisfy the statute's requirement that the claim be asserted in "the county in which the alleged unlawful practice occurred."

Finally, the Attorney General cites another case having nothing to do with the venue requirements of the MCRA, Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985). Batchelder involved a claim for attorney' fees under the MCRA with the Court in that matter reciting that the remedial provisions of the MRCA should be construed liberally. Defendants have no quarrel with that principle, but are unable to perceive the relevance it has to the mandatory venue requirements the legislature established in the MCRA.

The Attorney General's Opposition complains that the Motion to Dismiss did not object to the Attorney General's reliance on G.L.Ch. 223, Sec. 5. This is because G.L.Ch.

223, Sec. 5 is an appropriate venue provision for the AG's generic claims of public nuisance and trespass and any other claims that the Attorney General is asserting that are not subject to a specific venue requirement such as the MCRA claims.

The Attorney General misconstrues the Defendants' observations regarding claim splitting. To be clear: Defendants maintain that to comply with the statute, the Attorney General should transfer its MCRA claims to the County in which the conduct for each is alleged to have occurred. The AG should also join any other claims arising out of the same conduct (nuisance, trespass and the like) and for which venue is indeed currently proper under GL Ch. 223, Sec. 5. If the Attorney General chooses to leave behind the non-MCRA claims in Suffolk, it is only then that a claim splitting issue would arise.

Therefore, the only proper means of compliance with the statute would be for 1) the Attorney General either bring the entirety of her claims arising out of the same nucleus of operative fact in the proper respective counties, or 2) forgo the Civil Rights Act claims and proceed in Suffolk solely on the basis of its claims for public nuisance, trespass, and the like.

[FOR THE REPLY TO THE ISSUES ADDRESSED IN THE
COMMONWEALTH'S OPPOSITION REGARDING DISMISSAL BASED ON
FAILURE TO STATE CLAIM AND OVERBREADTH, THE DEFENDANTS ADOPT
AND INCORPORATE BY REFERENCE THE REPLY OF THE CO-DEFENDANT
LIAM MCNEIL]

WHEREFORE, for the foregoing reasons, Defendants request that this Court:

- 1) GRANT the Defendants' Motion to Dismiss; and,
- 2) Order such further relief that is fair and just.

Respectfully Submitted,

Defendants Christopher Hood and NSC,

DATED: March 28, 2024

/s/ William E. Gens

William E. Gens, BBO #556595
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CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of
the above document was served upon the
Office of the Attorney General by EMAIL on:

DATE: 03/29/2024

SPR

EXHIBIT

1

THE
GENERAL LAWS

OF
The Commonwealth of Massachusetts

ENACTED DECEMBER 22, 1920

TO TAKE EFFECT JANUARY 1, 1921

WITH THE

CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE
COMMONWEALTH AND THE REARRANGEMENT THEREOF
AND TABLES SHOWING THE DISPOSITION OF THE
REVISED LAWS AND OF OTHER STATUTES
OF GENERAL APPLICATION

VOL. II

CHAPTERS 128-282



BOSTON
WRIGHT & POTTER PRINTING CO., STATE PRINTERS
82 DEANE STREET
1921

Exec.
 RESERVATION OR ASSURANCE OF ATTACHMENT:
 114. Excessive and unreasonable attachments, how retained or discharged.
 DISOLUTION OF ATTACHMENT:
By Operation of Law.
 115. Dissolution of attachment by judgment.
 116. Dissolution of attachment by death of defendant.
 117. Liability of officer for not proceeds.
 118. Liability of creditor for proceeds paid over to him.
 119. Set-off not allowed in such case.
By Entry of Bond.
 120. Attachments dissolved by wrong bond.
 121. Hearing before approval of bond.
 122. Fees to be included in defendant's costs.
 123. Bond to be filed by defendant.

Exec.
 124. Release of writs of involunt detention.
 125. Bond in any value of property.
 126. Fees.
 127. Dissolution of attachment of realty fraudulently covered.
 128. Dissolution by deposit.
 129. Dissolution of attachment of individual property of one defendant.
By Appointment of Receiver.
 130. Dissolution of attachment by appointment of receiver.
 131. Discharge of receiver.
By Entry or Release in Registry of Deeds.
 132. Dissolution of attachment of real estate by plaintiff.
 EXECUTION OF BONDS.
 133. Execution of bonds.

VENUE OF ACTIONS.

Venue of transitory actions:
 G. L. c. 233, § 11A-11E;
 178A, 28, 113;
 R. L. c. 93, § 11, 14;
 153A, 302, 353, 355;
 185C, 371;
 P. S. c. 121, § 1;
 P. S. c. 161, § 1;
 R. L. c. 197, § 1.

SECTION 1. A transitory action shall, except as otherwise provided, if any one of the parties thereto lives in the commonwealth, be brought in the county where one of them lives or has his usual place of business. If brought in any other county, unless removed under section fifteen, the writ shall abate and the defendant shall be allowed double costs. If neither party lives in the commonwealth, the action may be brought in any county.

4 Mass. 391.	10 Cook, 113.	10 Gray, 116.	136 Mass. 322.
6 Mass. 331.	14 Cook, 283.	1 Ames, 229.	221 Mass. 115.
3 Met. 269.	7 Conn. 122.	4 Allen, 17.	239 Mass. 102.
3 Cash. 306.	13 Gray, 31.		

In districts and squares:
 R. L. c. 233, § 11A;
 G. L. c. 233, § 11A;
 189A, 37, § 3;
 187, § 1, § 3;
 187B, 306, § 1;
 187C, 304;
 187D, 311;
 P. S. c. 121, § 1;
 13, 14, 15, 16;
 99, 173, § 1;
 180C, 306, § 1;
 189A, 306, § 1;
 611;
 R. L. c. 197, § 1;
 182, 149, § 1;
 141B, 641;
 141 Mass. 449;
 154 Mass. 144;
 170 Mass. 269;
 201 Mass. 282;
 278 Mass. 363.

SECTION 2. A transitory action in a district court shall be brought in the county where one of the defendants lives or has his usual place of business, or, if commenced by trustee process, in the county where all persons named in the writ as trustees live or have their usual places of business, and, in either case, in a court within whose judicial district one of the parties lives or has his usual place of business, except that an action commenced by trustee process may be brought in the municipal court of the city of Boston if any trustee resides or has his usual place of business in Suffolk county.

Said courts shall have jurisdiction of a transitory action against a defendant who is not an inhabitant of the commonwealth, if personal service or an effectual attachment of property is made within the commonwealth; and such action may be brought in any of said courts in the county where the service or attachment was made.

Certain actions summary:
 1916, 116, § 3.

SECTION 3. Every action for rent, use and occupation or breach of covenant shall be considered a transitory action.

Venue of actions of replevin:
 178C, 37, § 1, 4.

SECTION 4. An action of replevin shall be brought in the county where the goods or beasts are detained.
 R. L. c. 114, § 29. G. L. c. 114, § 11. P. S. c. 104, § 11. R. L. c. 197, § 1.

SECTION 5. A civil action in which the commonwealth is plaintiff or in which money due to the commonwealth is sought to be recovered may be brought in the county where the defendant lives or has his usual place of business, or in Suffolk county.

Action by the commonwealth:
 188, 233, § 1;
 P. S. c. 107, § 1, 4;
 R. L. c. 197, § 1.

SECTION 6. A local or transitory action by a county shall be brought in the county where the defendant lives or in a county adjoining the plaintiff county. If the defendant lives in the plaintiff county, it shall be brought in an adjoining county. Such action against a county shall, at the election of the plaintiff, be brought in the county where he lives, in the defendant county or in an adjoining county.

Action by a local government:
 189A, 178, § 1;
 189B, 30, § 1;
 191, § 1;
 191A, § 1;
 191B, § 1;
 191C, § 1;
 191D, § 1;
 191E, § 1;
 191F, § 1;
 191G, § 1;
 191H, § 1;
 191I, § 1;
 191J, § 1;
 191K, § 1;
 191L, § 1;
 191M, § 1;
 191N, § 1;
 191O, § 1;
 191P, § 1;
 191Q, § 1;
 191R, § 1;
 191S, § 1;
 191T, § 1;
 191U, § 1;
 191V, § 1;
 191W, § 1;
 191X, § 1;
 191Y, § 1;
 191Z, § 1.

R. L. c. 167, § 3. 7 Mass. 144.

SECTION 7. An action against a town or person to recover for injury or damage received by reason of a defect, want of repair or of an insufficient ruling in or upon a public way shall be brought in the county where said town is situated or in the county where the plaintiff lives, except that such action against the city of Boston may be brought in Middlesex county, in Norfolk county or in the county where the plaintiff lives, and such action against the town of Nantucket or against any town in Dukes county may be brought in Bristol county. An action against a town or person to recover for injury or damage received in the commonwealth by reason of negligence other than that relating to such defect, want of repair or insufficient ruling shall be brought in the county where the plaintiff lives or has his usual place of business, or in the county where the alleged injury or damage was received.

Action by a person for injury or damage:
 189, 223, § 1;
 189A, 178, § 1;
 189B, 30, § 1;
 189C, 31, § 1;
 189D, 32, § 1;
 189E, 33, § 1;
 189F, 34, § 1;
 189G, 35, § 1;
 189H, 36, § 1;
 189I, 37, § 1;
 189J, 38, § 1;
 189K, 39, § 1;
 189L, 40, § 1;
 189M, 41, § 1;
 189N, 42, § 1;
 189O, 43, § 1;
 189P, 44, § 1;
 189Q, 45, § 1;
 189R, 46, § 1;
 189S, 47, § 1;
 189T, 48, § 1;
 189U, 49, § 1;
 189V, 50, § 1;
 189W, 51, § 1;
 189X, 52, § 1;
 189Y, 53, § 1;
 189Z, 54, § 1.

SECTION 8. Transitory actions, except those mentioned in the preceding section, to which a corporation, other than a county or the city of Boston, is a party, may be brought as follows:

Action by and against corporations:
 189, 223, § 1;
 189A, 178, § 1;
 189B, 30, § 1;
 189C, 31, § 1;
 189D, 32, § 1;
 189E, 33, § 1;
 189F, 34, § 1;
 189G, 35, § 1;
 189H, 36, § 1;
 189I, 37, § 1;
 189J, 38, § 1;
 189K, 39, § 1;
 189L, 40, § 1;
 189M, 41, § 1;
 189N, 42, § 1;
 189O, 43, § 1;
 189P, 44, § 1;
 189Q, 45, § 1;
 189R, 46, § 1;
 189S, 47, § 1;
 189T, 48, § 1;
 189U, 49, § 1;
 189V, 50, § 1;
 189W, 51, § 1;
 189X, 52, § 1;
 189Y, 53, § 1;
 189Z, 54, § 1.

(1) If both parties are cities, towns or parishes, in the county where either party is situated.
 (2) If both parties are corporations, other than a city, town or parish, in any county in which either corporation has a usual place of business, or in which it held its last annual meeting, or usually holds its meetings.
 (3) If one party is a city, town or parish, and the other a corporation named in clause (2), in any county in which either party might sue or be sued.
 (4) If one party is a corporation named in clause (1) or (2), and the other an individual, in any county in which the corporation might sue or be sued, or in the county in which the individual lives or has a usual place of business.

SECTION 9. An action by or against the city of Boston, except actions mentioned in action seven and actions by the collector of said city under sections thirty-five and thirty-six of chapter sixty, may be brought in Suffolk, Essex, Middlesex or Norfolk county, or in the county in which the plaintiff lives.

Venue of actions by or against the city of Boston:
 189, 223, § 1;
 189A, 178, § 1;
 189B, 30, § 1;
 189C, 31, § 1;
 189D, 32, § 1;
 189E, 33, § 1;
 189F, 34, § 1;
 189G, 35, § 1;
 189H, 36, § 1;
 189I, 37, § 1;
 189J, 38, § 1;
 189K, 39, § 1;
 189L, 40, § 1;
 189M, 41, § 1;
 189N, 42, § 1;
 189O, 43, § 1;
 189P, 44, § 1;
 189Q, 45, § 1;
 189R, 46, § 1;
 189S, 47, § 1;
 189T, 48, § 1;
 189U, 49, § 1;
 189V, 50, § 1;
 189W, 51, § 1;
 189X, 52, § 1;
 189Y, 53, § 1;
 189Z, 54, § 1.

189, § 1, 13. 187, § 29. R. L. c. 197, § 3.
 G. L. c. 157, § 3. P. S. c. 104, § 19. 23 Mass. 367.

SECTION 10. The defendant in an action brought in Suffolk county by the city of Boston or by its collector may, if the action is brought in the supreme judicial or superior court, within thirty days after the day for appearance, or if the action is commenced in a district court

Transfer of cases from district court to superior or supreme judicial court:
 127, 14, § 1, 4;
 P. S. c. 104, § 19;
 117, 120, 121;
 120, § 1, 14.