COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1671

MAE LINDQUIST

vs.

STEVE STELLA.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This case returns to us after a remand to the Housing Court, see Lindquist v. Stella, 94 Mass. App. Ct. 1101 (2018), and the entry of a judgment after remand. The facts are well known to the parties and will not be repeated here except to the extent relevant to the claims before us. In her third amended ruling and subsequently entered judgment, the judge awarded damages to Stella, the defendant, on his counterclaims, awarding $2,745 for violation of the implied warranty of habitability, $1,950 for breach of the implied warranty of quiet enjoyment, and $1,950 for retaliation under G. L. c. 186, § 18. She doubled the damages on the breach of the implied warranty of habitability claim under G. L. c. 93A. Total damages awarded to the defendant amounted to $8,090 after subtracting $1,300 in rent owed to the plaintiff. The judge awarded the defendant

attorney's fees of $9,103.80 and costs in the amount of $127.88. The plaintiff, Lindquist, has appealed.

The judge found that both the front and back porches of the premises rented to the defendant, Stella, were "deteriorating and became progressively worse" during his tenancy, and that the plaintiff, Lindquist, was aware of the defective condition of the porches at least since 2014. The plaintiff argues first that this finding was clearly erroneous.

Although the judge need not have credited it, and the plaintiff asserts her belief that it is false, there was, in fact, sufficient evidence to support her finding, and we therefore conclude that it was not clearly erroneous. In particular, the defendant testified that problems with the porches that existed in 2011 when he moved in became progressively worse. In the 2013-2014 time period when Stella, not for the first time, raised problems with Lindquist, she asked him to calculate the cost to replace the front porch. After giving information he had compiled to the plaintiff, she replied that the estimated costs to replace the front porch was "too much money" and did not repair the porch. As to the rear porch, a building inspector noted after an inspection on December 4, 2015, that it was "in disrepair" -- specifically, "the steel lolly columns are badly rusted, the outside beam is bowed and needs a support in the mid span, and the stair treads

are loose and need to be secured." Finally, in March of 2016, a different building inspector found rotting -- which, of course, does not appear instantaneously -- on both the front and rear porch. This evidence is sufficient to support the judge's findings. That the notes of the December 4th inspection did not mention the front porch at all does not compel a conclusion that it was, at the time of that inspection, in a safe and nondefective condition.

Given the evidence that was already in the record, we also disagree with the plaintiff's contention that it was an abuse of discretion for the judge not to hold an additional evidentiary hearing after remand.

The plaintiff next argues that there was insufficient evidence to show a violation of the covenant of quiet enjoyment through cross-metering of electricity, such that certain common area lights were placed on the defendant's electric bill. The judge found as a fact that there was no consent, oral or written, by the defendant to this cross-metering. That finding is supported by the defendant's testimony. To be sure, the factual point was contested. But the plaintiff is incorrect that the fact found is so implausible given the circumstances that it is clear error.

Finally, the plaintiff argues that attorney's fees should not have been awarded because the defendant was represented by

salaried attorneys from Community Legal Aid. It is, however, well settled that attorney's fees are available in such cases. See Darmetko v. Boston Hous. Auth., 378 Mass. 758, 764 (1979) ("There is a wealth of authority in support of awarding attorney's fees to a legal services organization where an award is authorized by statute"). We allow the defendant's request for an award of attorney's fees on appeal as provided by G. L. c. 186, §§ 14, 18, and G. L. c. 93A, § 9. Stella may file his application for appellate attorney's fees and costs within fourteen days of the date of the decision, in accordance with Fabre v. Walton, 441 Mass. 9, 10-11 (2004). The plaintiff shall then have fourteen days within which to respond.

Judgment entered June 27, 2019, affirmed.

By the Court (Green, C.J., Meade & Rubin, JJ.[1]),

Joseph F. Stanton

Clerk

Entered: March 5, 2021.

[1] The panelists are listed in order of seniority.