

Slip Copy, 81 Mass.App.Ct. 1131, 2012 WL 1415003 (Mass.App.Ct.)  
(Table, Text in WESTLAW), Unpublished Disposition  
(Cite as: 2012 WL 1415003 (Mass.App.Ct.))

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

Appeals Court of Massachusetts.  
Michael DEEP  
v.  
Patrice TREMBLAY.

No. 11-P-1468.  
April 25, 2012.

By the Court (COHEN, GREEN & [GRAHAM](#), JJ.).

*MEMORANDUM AND ORDER PURSUANT TO  
RULE 1:28*

\*1 Passing the question whether the plaintiff's appeal is properly before us,<sup>[FN1](#)</sup> we discern no cause to disturb the judgment. We briefly address the plaintiff's several claims of error.

[FN1](#). Judgment entered on May 24, 2011. Under [G.L. c. 239, § 5](#), any notice of appeal must be filed within ten days after entry of judgment. Accordingly, any timely notice of appeal was required to be filed by June 3, 2011 (a Friday). The docket reflects that the notice of appeal was filed on June 6, 2011. The copy of the notice of appeal included in the record appendix is dated June 3, 2011, and includes a certificate stating that it was served on the defendant's counsel on that date, but it includes no date stamp to suggest that it was filed on a date earlier than the

date reflected on the docket.

1. *Late fee*. We discern no error in the conclusion by the motion judge that the late fee provision contained in the lease between the parties violates [940 Code Mass. Regs. § 10.03\(2\)\(i\)](#) (1996). There is basis in the summary judgment record to support a conclusion that the \$25 fee bears no reasonable relationship to the amount necessary to compensate the plaintiff for costs he incurs when a tenant is late with a rental payment.<sup>[FN2](#)</sup> In addition, the application of future timely rental payments first to satisfy previously imposed late fees, before applying such payments to current rent, has the effect of causing a tenant to incur additional late fees even when timely paying the monthly rental amount in full in circumstances where a late fee was imposed on a previous late payment. Particularly insofar as tenants in manufactured housing represent a vulnerable population, see [Greenfield Country Estates Tenants Assn. v. Deep](#), [423 Mass. 81, 83 \(1996\)](#), we conclude that the motion judge did not err in concluding that the late fee provision violated [940 Code Mass. Regs. § 10.03\(2\)\(i\)](#).<sup>[FN3](#)</sup> 2. *Settlement offer*; *G.L. c. 93A*. We need not consider whether the plaintiff's offer of settlement was reasonable, as he did not tender it until more than thirty days after the defendant articulated the basis of her c. 93A claim in her counterclaim. The fact that the defendant identified a different regulatory provision from the regulations applicable to manufactured housing is of no moment; her description of the underlying facts, particularly in the context of the parties' prior dealings, furnished ample description of the basis of her claim. See [Casavant v. Norwegian Cruise Line Ltd.](#), [460 Mass. 500, 506 \(2011\)](#).

[FN2](#). The late fee constitutes approximately twelve percent of the monthly rental amount, but is applied to a delinquency of only thirty days. Accordingly, it represents an annualized interest rate of more than 140 percent. Moreover, the plaintiff has furnished nothing in the record to substantiate any costs or expenses (such as costs associated with sending notices or taking other actions necessitated by a late rental payment) arising by reason of a late payment. The plaintiff's unsubstantiated expression of his

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opinion that the charge is reasonable does not create a triable question of fact.

[FN3](#). Contrary to the plaintiff's contention, the question raises no issue of fact requiring further evidentiary proceedings before resolution of the question of the legal validity of the provision. The terms of the provision, and its effects, are not in dispute.

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3. *Notice to quit*. There is likewise no error in the determination by the motion judge that the notice to quit was defective, by reason of its failure to state clearly the amount necessary to cure the delinquency. See [G.L. c. 140, § 32J](#). Contrary to the plaintiff's contention, the narrative description of the rent delinquency as comprised of four months' rent, each in the amount of \$210, did not clearly apprise the defendant of the amount necessary to cure the default; the very sentence stating the monthly rent amount ended with an assertion that "YOU OWE A TOTAL OF \$875.54 RENT AND LATE FEES." Moreover, as we have observed, *supra*, it is undisputed that the plaintiff's practice was to apply payments first to any unpaid late fees before crediting any amounts toward rent; accordingly, had the defendant tendered \$840 in response to the notice to quit, the plaintiff would have considered it inadequate to cure the outstanding delinquency. The plaintiff's late-conceived argument that the notice to quit clearly stated the amount needed to cure the delinquency is at odds both with the face of the notice to quit itself and with the plaintiff's stated legal position throughout the dispute between the parties.

\*2 4. *Attorney's fees*. The defendant has requested an award of her attorney's fees incurred on appeal, as well as double costs. We agree that such an award is appropriate. See [Yorke Mgmt. v. Castro](#), 406 Mass. 17, 19 (1989). The defendant may within fifteen days of the date of the rescript file with this court and serve on the plaintiff an application that includes the amount of her attorney's fees incurred on appeal, supported by an affidavit detailing such fees, in accordance with the procedure described in [Fabre v. Walton](#), 441 Mass. 9, 10–11 (2004). The plaintiff may, within fifteen days thereafter, file with this court and serve on the defendant an opposition to the amount of fees so claimed.

*Judgment affirmed.*