

MASSACHUSETTS SUPERIOR COURT

Pamela L. Owens, as Personal Representative of the Estate of
William A. Owens v. Crescent Hill Partners, LLC, and Raymond
Martin

Owens v. Crescent Hill Partners · No. 35; 41; 43 · Decided March 18, 2026

SUMMARY

The Massachusetts Superior Court addresses standing, motions to strike, and summary judgment in an estate representative’s claims concerning an alleged joint venture or partnership, contractual rights, unpaid wages, unjust enrichment, and G.L. c. 93A. The court finds that the plaintiff’s appointment as special personal representative cures any standing defect, strikes a declaration lacking competent foundation and containing hearsay, and denies a motion to strike an SEC Form ADV. Summary judgment is allowed on declaratory-relief, Wage Act, minimum-wage, and Chapter 93A claims, but denied on the alleged joint venture or partnership, contract, and unjust-enrichment claims.

CASE DETAILS

COURT	Massachusetts Superior Court
WRITING FOR THE COURT	Kenneth W. Salinger
JURISDICTION	Massachusetts Superior Court
DECIDED	March 18, 2026
DOCKET	35; 41; 43
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for summary judgment on all claims, and both sides moved to strike portions of the summary judgment record. The Superior Court ruled on standing, the motions to strike, and the partial summary judgment motion.
STANDARD OF REVIEW	Summary judgment is appropriate when the undisputed material facts establish that a party is entitled to judgment as a matter of law; it is improper when a reasonable jury could return a verdict for the nonmoving party. On summary judgment, the court may not consider inadmissible evidence, including incompetent affidavits, hearsay, and inadmissible lay opinion.

PRECEDENTIAL VALUE	Published Massachusetts Superior Court opinion; no reporter citation appears in the source.
PARTIES	Pamela L. Owens, as Personal Representative of the Estate of William A. Owens v. Crescent Hill Partners, LLC, Raymond Martin

TOPICS

summary judgment standing subject matter jurisdiction evidence contracts

PRACTICE AREAS

civil procedure probate contracts employment law evidence commercial litigation

QUESTIONS PRESENTED

1. Whether Plaintiff had standing to prosecute the estate's claims after the Probate Court appointed her Special Personal Representative.
2. Whether the Victoria Reen declaration was competent and admissible evidence for purposes of summary judgment.
3. Whether the court could consider and take judicial notice of the SEC Form ADV submitted as exhibit 25.
4. Whether a reasonable jury could find that Owens and Martin, directly or through Crescent Hill Partners, formed a joint venture or partnership.
5. Whether Crescent Hill Partners, an LLC, could form a partnership or joint venture with Owens.
6. Whether Defendants were entitled to summary judgment on the contract, unjust-enrichment, declaratory-judgment, Wage Act, Minimum Wage Act, and G.L. c. 93A claims.

HOLDINGS

1. The Probate Court's appointment of Plaintiff as Special Personal Representative with authority to collect and manage estate assets cured any defect in her standing to prosecute the claims.
2. The Reen declaration could not be considered in support of summary judgment because it was not properly sworn, lacked a foundation establishing personal knowledge or competency, contained inadmissible hearsay, and included inadmissible lay opinions.
3. The court could take judicial notice of the March 2014 Form ADV filed with the SEC and consider it solely for purposes of deciding the summary judgment motion.
4. Summary judgment was not warranted on the joint venture, partnership, fiduciary-duty, or accounting claims because a reasonable jury could find that Owens and Martin, directly or through Crescent Hill Partners, agreed to form a joint venture or partnership and to share profits and losses.
5. Crescent Hill Partners, LLC could form a partnership or, by analogy, a joint venture with a natural person such as Owens.

6. Defendants were entitled to summary judgment on the Independent Contractor Agreement declaratory claim, the Wage Act claim, and the Minimum Wage Act claim because the undisputed evidence showed that CHP paid Owens the full \$75,168.33 he invoiced for 2020, and the alleged 1,600 hours produced an hourly rate well above the statutory minimum wage.
7. Defendants were not entitled to summary judgment on the unjust-enrichment claim because Plaintiff's testimony created a triable issue as to whether Defendants were unjustly enriched by Owens's payment of half the rent for CHP's office.
8. Plaintiff waived any opposition to summary judgment on the G.L. c. 93A claim by failing to present an argument against that aspect of Defendants' motion in her written opposition.

KEY QUOTATIONS

“A court may not grant summary judgment where, as here, “a reasonable jury could return a verdict for the nonmoving party.”” (at 6)

“The standards for determining whether parties formed a joint venture or a partnership are the same as well.” (at 7)

“A joint venture or a partnership is formed when the participants in a business enterprise intend to operate as joint venturers or partners who will share in all aspects of and responsibility for their shared business.” (at 7)

“A party that opposes a motion in the Superior Court must submit a memorandum “that includes a statement of reasons, with supporting authorities, that the motion should not be allowed.”” (at 9)

FACTUAL BACKGROUND

William A. Owens allegedly entered into a joint venture or partnership with Raymond Martin, directly or through Crescent Hill Partners, LLC, to provide financial planning and investment advice. Plaintiff alleged that Owens contributed talents and other assets, was entitled to a share of profits, and alternatively performed work as an employee or independent contractor. During 2020, Owens invoiced Crescent Hill Partners for \$75,168.33, which the company paid in full, and Plaintiff alleged that Owens also paid half of the company's office rent from his compensation. Plaintiff was appointed Special Personal Representative of Owens's estate during the litigation.

PROCEDURAL HISTORY

Plaintiff brought claims arising from the alleged business relationship between William A. Owens and Raymond Martin or Crescent Hill Partners, LLC, including joint venture or partnership, fiduciary-duty, accounting, contract, wage, minimum-wage, unjust-enrichment, declaratory-judgment, and G.L. c. 93A claims. Defendants moved for summary judgment, while the parties filed motions to strike evidence. During the litigation, the Probate Court appointed Plaintiff as Special Personal Representative with authority to collect and manage estate assets. The Superior Court found that appointment cured any standing defect, allowed summary judgment on counts II, VIII, IX, and X, denied summary judgment on the remaining claims, allowed Plaintiff's motion to strike the Reen declaration, and denied Defendants' motion concerning Form ADV exhibit 25.

DISPOSITION

CASES CITED

- *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 322 & n.6 (1998)
- *Matter of Estate of Slavin*, 492 Mass. 551, 557-558 (2023)
- *Stanton Industries, Inc. v. Columbus Mills, Inc.*, 4 Mass. App. Ct. 793, 794 (1976) (rescript)
- *Bardige v. Performance Specialists, Inc.*, 74 Mass. App. Ct. 99, 103 (2009)
- *O'Brion, Russell & Co. v. LeMay*, 370 Mass. 243, 245 (1976)
- *Symmons v. O'Keefe*, 419 Mass. 288, 295 (1995)
- *Somers v. Converged Access, Inc.*, 454 Mass. 582, 597 (2009)
- *Borella v. Renfro*, 96 Mass. App. Ct. 617, 625 n.22 (2019)
- *Lord v. Rowse*, 195 Mass. 216 (1907)
- *Fisher v. Lint*, 69 Mass. App. Ct. 360, 368 n.11 (2007)
- *Sommer v. Maharaj*, 451 Mass. 615, 621 (2008)
- *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962)
- *Rental Property Mgmt. Svcs. v. Hatcher*, 479 Mass. 542, 556 (2018)
- *Commonwealth v. Greco*, 76 Mass. App. Ct. 296, 301 n.9, rev. denied, 457 Mass. 1106 and 458 Mass. 1105 (2010)
- *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000)
- *Tilcon-Warren Quarries Inc. v. Commissioner of Revenue*, 392 Mass. 670, 671 n.4 (1984)
- *Marhefka v. Zoning Bd. of Appeals of Sutton*, 79 Mass. App. Ct. 515, 516 n.5 (2011)
- *Williams v. Caption Mgmt. LLC*, No. 24-CV-01018 (ALC), 2025 WL 896888, at *1 n.1 (S.D.N.Y. Mar. 24, 2025)
- *Securities and Exchange Comm'n v. Cutter Financial Group, LLC*, No. 23-cv-10589-DLC, 2023 WL 8653927, at *5 n.3 (D. Mass. Dec. 14, 2023)
- *In re Packaged Seafood Products Antitrust Litig.*, No. 15-MD-2670 DMS (MDD), 2022 WL 836951, at *4 n.13 (S.D. Cal. Mar. 21, 2022)
- *Fire & Police Pension Ass'n of Colorado v. Abiomed, Inc.*, 778 F.3d 228, 232 n.2 (1st Cir. 2015)
- *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000)
- *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014)
- *Yates v. Municipal Mortg. & Equity, LLC*, 744 F.3d 874, 881 (4th Cir. 2014)
- *Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.*, 976 F.3d 585, 589 (5th Cir. 2020)
- *Northstar Financial Advisors Inc. v. Schwab Investments*, 779 F.3d 1036, 1043 (9th Cir. 2015)
- *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276-1277 (11th Cir. 1999)
- *In re Santa Fe Nat. Tobacco Co. Mktg. & Sales Pracs. & Prods. Liab. Litig.*, 288 F. Supp. 3d 1087, 1211 (D.N.M. 2017)
- *In re Am. Apparel, Inc. Shareholder Litig.*, 855 F. Supp. 2d 1043, 1064 (C.D. Cal. 2012)

- Dennis v. Kaskel, 79 Mass. App. Ct. 736, 741 (2011)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Doiron v. Castonguay, 401 Mass. 705, 707 & n.2 (1988)
- National Sch. Bus Serv., Inc. v. Comm'r of Dep't of Emp. & Training, 49 Mass. App. Ct. 445, 453 n.13 (2000)
- Gurry v. Cumberland Farms, Inc., 406 Mass. 615, 623-624 (1990)
- Shain Inv. Co., Inc. v. Cohen, 15 Mass. App. Ct. 4, 7-9 (1982)
- BPR Grp. Ltd. P'ship v. Bendetson, 453 Mass. 853, 861 (2009)
- Largo Realty, Inc. v. Purcell, 77 Mass. App. Ct. 162, 164 (2010)
- Cook v. Patient Edu, LLC, 465 Mass. 548, 553 n.11 (2013)
- Alliance, AFSME/SEUI, AFL-CIO v. Commonwealth, 425 Mass. 534, 537-539 (1997)
- Liakas v. Planning Bd. of Dracut, No. 18-P-1059, 2019 WL 1324748, at *1 (Mass. App. Ct. Mar. 25, 2019)
- Adiletto v. Brockton Cut Sole Corp., 322 Mass. 110, 112 (1947)
- Cary v. New England Organ Bank, 446 Mass. 270, 285 (2006)

OPINION

PER CURIAM.

Pamela Owens (“Plaintiff”) was recently appointed to serve as Special Representative of the Estate of William A. Owens (“Owens”), her deceased spouse. In that capacity, she claims that Mr. Owens entered into a joint venture or partnership with Raymond Martin (or his company Crescent Hill Partners, LLC) to provide financial planning and investment advice to individuals, and that Defendants failed to pay Owens his full share of the venture’s or partnership’s profits.

Plaintiff claims in the alternative that if Owens was not a joint venturer or partner then he was an employee and is owed unpaid wages as well as compensation for alleged unjust enrichment, and that if Owens was instead an independent contractor then Defendants are liable in some way for engaging in unfair or deceptive practices in violation of G.L. c. 93A.

Defendants have moved for summary judgment on all claims. That gave rise to several motions to strike. The Court concludes that the recent Probate Court order allowing Plaintiff’s motion to be appointed Special Personal Representative for Owens’ Estate gives Plaintiff standing to bring this action.

The Court will allow Plaintiff’s motion to strike the declaration of Victoria Breen and deny Defendants’ motion to strike the Form ADV filed as Exhibit 25 to the summary judgment motion. With respect to Defendants’ motion for summary judgment, the Court will allow the motion in part with respect to Plaintiff’s claims for declaratory judgment as to the enforceability of Owens’ Independent Contractor Agreement (count II of the amended complaint) and under the Wage Act (count VIII), the Minimum Wage Act (count IX), and G.L. c. 93A (count X).

It will otherwise deny the motion with respect to the challenge to Plaintiff's standing and to Plaintiff's other claims, including the claims concerning the alleged joint venture or partnership.

-1- 1. Standing. The Court will first address Defendants' argument that they are entitled to summary judgment on all claims because Plaintiff lacks standing to bring this action, since that concerns whether the Court has subject matter jurisdiction to hear the case at all.

See generally *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 322 & n.6 (1998) (since standing is issue of subject matter jurisdiction that "goes to the power of the court to hear and decide the matter," court must "consider that question first"). Defendants argued that because Plaintiff was merely a "voluntary personal representative" of the Estate under G.L. c. 190B, § 3-1201, she only had authority to act with respect to personal property worth less than \$25,000 that she had identified as assets of the Estate in a filing with the Probate Court.

In response, Plaintiff filed an Emergency Motion in the Probate Court asking to be appointed Special Personal Representative of the Estate. The Court takes judicial notice that on February 27, 2026, the Probate Court allowed that motion and entered an order appointing Plaintiff as Special Personal Representative with the authority to act pursuant to G.L. c. 190B, §§ 3-614, 3-617, and 3-715 et seq. "to collect and manage the assets of the estate." [1] This new order cures any defect in Plaintiff's standing to prosecute the claims in this case.

See *Matter of Estate of Slavin*, 492 Mass. 551, 557–558 (2023).

2. Motions to Strike. Both sides have filed motions to strike parts of the summary judgment record.

2.1. Victoria Reen Declaration. Plaintiff has moved to strike the Declaration of Victoria Reen. Defendants have the burden of "show[ing] affirmatively" that their summary judgment affiants are "competent to testify to the matters stated" in their affidavits.

Mass. R. Civ. P. 56(e). The have not met that burden with respect to Ms. Reen's declaration. The Court will therefore allow Plaintiff's motion to strike the Reen declaration. See *Stanton Industries, Inc. v. Columbus Mills, Inc.*, 4 Mass. App. Ct. 793, 794 (1976) (rescript) (court must disregard summary judgment affidavit from witness not shown to be competent to testify to assertions in affidavit).

First, the original Reen declaration is not admissible evidence, and may not be considered as support for Defendants' summary judgment motion, because "it [1] The Probate Court's order says the appointment will expire on May 26, 2026. If this civil action is not resolved by then, Plaintiff may need to seek an extension under G.L. c. 190B, § 3-617(a).

-2- was not sworn to or signed under the penalties of perjury." [2] *Bardige v. Performance Specialists, Inc.*, 74 Mass. App.

Ct. 99, 103 (2009), quoting *O'Brion, Russell & Co. v. LeMay*, 370 Mass. 243, 245 (1976). If this were the only problem with this declaration it could be cured by permitting Defendants to file the

proposed substitute declaration, which Ms. Reen signed under the penalties of perjury. But there are other fatal defects.

Second, most of the substantive paragraphs in this declaration purport to authenticate and draw conclusions based on documents provided by Fidelity Brokerage Services LLC. But Ms. Reen does not say that she was a keeper of records for Fidelity, or even that she ever worked for Fidelity Brokerage Services in any other capacity. Instead, Reen represents that she is (or was) employed by National Financial Services LLC. Though Defendants' counsel represents that National Financial Services is owned by an entity that may be an affiliate of Fidelity Brokerage Services, that does not establish that Reen has any personal knowledge as to the authenticity of these documents or any basis for sharing her opinion as to what the documents show.

To the extent that these paragraphs of the Reen declaration implicitly convey that someone at Fidelity told Reen that the documents are authentic, that constitutes inadmissible hearsay that the Court may not consider in deciding the summary judgment motion. See *Symmons v. O'Keefe*, 419 Mass. 288, 295 (1995) ("inadmissible hearsay" may not be considered in deciding summary judgment motion).

And to the extent that these paragraphs convey Reen's opinion as to what the attached documents establish, those opinions are also inadmissible and may not be considered. See *Somers v. Converged Access, Inc.*, 454 Mass. 582, 597 (2009) (inadmissible lay opinion cannot be considered in evaluating summary judgment motion); *Borella v. Renfro*, 96 Mass. App. Ct. 617, 625 n.22 (2019) (same).

[2] "Sworn to" and "signed under the penalties of perjury" are two different ways of saying the same thing. The words "subscribed and sworn to" imply that the affiant or other signatory swore that their statements were true. See *Lord v. Rowse*, 195 Mass. 216 (1907).

Thus, each such signatory faces the threat of being penalized for committing perjury if any of their sworn statements were false. "Under G.L. c. 268, § 1, one who willfully swears or affirms falsely regarding a material issue in an adjudicatory proceeding ... is guilty of perjury." *Fisher v. Lint*, 69 Mass. App. Ct. 360, 368 n.11 (2007). -3- Third, paragraphs 7 and 10 are rank hearsay.

In both paragraphs, Reen says, "I have been advised by counsel to Fidelity responsible for responding to third- party discovery in this matter that, after a reasonably diligent search," Fidelity could not locate certain categories of documents. Those paragraphs are being offered to establish that the out-of-court statements allegedly conveyed to Reen are true.

They are therefore inadmissible hearsay. See *Commonwealth v. Mendes*, 463 Mass. 353, 367–368 (2012) (rule against hearsay bars admission of out-of- court statements offered to prove that statement was true). 2.2. Exhibit 25. Defendants have moved to strike one version of the Form

ADV filed by Sage Hill Partners LLC (the prior name of defendant Crescent Hill Partners LLC) and replace it with another.

Form ADV is the form used by investment advisors to register with the federal Securities and Exchange Commission (or “SEC”). Plaintiff’s counsel represents that she obtained the current Exhibit 25 from the SEC in response to a Freedom of Information Act (“FOIA”) request.

On its face, Exhibit 25 appears to be a Form ADV that Raymont Martin filed on March 28, 2014, on behalf of Sage Hill Partners, LLC, as its “Annual Amendment”. The form states that the company’s primary business name was “Crescent Hill Partners LLC.” Of significance to the Plaintiff, this March 2014 Form ADV lists Williams Owens, COO (i.e., Chief Operating Officer), as an additional regulatory contact person.

Defendants ask the Court to strike the current Exhibit 25 and replace it with an “Other-Than-Annual-Amendment” Form ADV that was filed on behalf of Crescent Hill Partners LLC on April 29, 2014. This amendment changed the name of the filing entity from Sage Hill Partners LLC to Crescent Hill Partners LLC. But it lists William Owens as COO of and an additional regulatory contact person for the company.

Plaintiff opposes this motion. Defendants argue that the March 2014 Form ADV should be stricken because it is “redlined” and “unauthenticated.” Tellingly, however, Defendants do not assert that the current Exhibit 25 is not authentic. Instead, they ask the Court to strike it because Plaintiff has not yet jumped through the hoops needed to make the document automatically admissible.

In other words, it appears that Defendants have filed this motion to strike merely to be difficult, or because they believe that the March 2014 Form ADV contains information that may help Plaintiff prove their case, and -4- not because there is an actual dispute as to whether the current Exhibit 25 is authentic.

The Court will exercise its discretion and deny this motion to strike. By statute, copies of documents that have been filed with the SEC are admissible in Massachusetts so long as they are properly authenticated by the SEC. See G.L. c. 233, § 76A.

In the Superior Court, judges expect all parties to stipulate to the authenticity of their own documents—whether the party has produced the document during discovery or filed it with a regulatory agency like the SEC—unless there is an actual dispute as to authenticity. If a party fails to stipulate to the authenticity of their own documents where authenticity is not actually in dispute, and as a result forces their opponent to incur unnecessary costs to authenticate the party’s own document, the trial judge would have broad discretion to exercise their inherent power to impose appropriate sanctions upon the party who is being unnecessarily difficult.

A trial judge has inherent power to manage its docket “to achieve the orderly and expeditious disposition of cases.” *Sommer v. Maharaj*, 451 Mass. 615, 621 (2008), quoting *Link v. Wabash R.R.*, 370 U.S. 626, 630–631 (1962). This includes the “inherent power to impose sanctions for misconduct” that obstructs or interferes with “the fair administration of justice.” See *Rental Property Mgmt.*

Svcs. v. Hatcher, 479 Mass. 542, 556 (2018). For present purposes, the Court will assume that Plaintiff could obtain certification sufficient to meet the requirements of G.L. c. 233, § 76A. It will therefore exercise its discretion to take judicial notice of the March 2014 Form ADV, solely for the purposes of deciding Defendants’ summary judgment motion.

The Court may take judicial notice of facts “capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned.” *Commonwealth v. Greco*, 76 Mass. App. Ct. 296, 301 n.9, rev. denied, 457 Mass. 1106 and 458 Mass. 1105 (2010), quoting Mass. Guide Evid. § 201(b)(2).

For example, the Court may take judicial notice of “matters of public record.” *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000); accord *Tilcon- Warren Quarries Inc. v. Commissioner of Revenue*, 392 Mass. 670, 671 n.4 (1984) (taking notice of Commissioner’s list of manufacturing corporations); *Marhefka -5- v. Zoning Bd. of Appeals of Sutton*, 79 Mass. App. Ct.

515, 516 n.5 (2011) (taking notice of local assessor’s online database). This includes taking judicial notice of the content of SEC filings that are publicly accessible, either through the SEC’s public databases or by serving a FOIA request. See *Williams v. Caption Mgmt. LLC*, no. 24-CV-01018 (ALC), 2025 WL 896888, at *1 n.1 (S.D.N.Y. March 24, 2025) (taking notice of SEC Form ADV filed by defendants); *Securities and Exchange Comm’n v. Cutter Financial Group, LLC*, no. 23-cv-10589-DLC, 2023 WL 8653927, at *5 n.3 (D.Mass.

Dec. 14, 2023) (Casper, J.) (same); *In re Packaged Seafood Products Antitrust Litig.*, no. 15-MD-2670 DMS (MDD), 2022 WL 836951, at *4 n.13 (S.D. Cal. March 21, 2022); see generally *Fire & Police Pension Ass’n of Colorado v. Abiomed, Inc.*, 778 F.3d 228, 232 n.2 (1st Cir. 2015) (trial court properly considered contents of defendant’s filings with SEC in deciding motion to dismiss, even though they were not referenced in or attached to the complaint); accord *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir.

2000) (same); *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (same); *Yates v. Municipal Mortg. & Equity, LLC*, 744 F.3d 874, 881 (4th Cir. 2014) (same); *Basic Capital Mgmt, Inc. v. Dynex Capital, Inc.*, 976 F.3d 585, 589 (5th Cir. 2020) (same); *Northstar Financial Advisors Inc. v. Schwab Investments*, 779 F.3d 1036, 1043 (9th Cir. 2015) (same); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276–1277 (11th Cir.

1999) (same). See also, e.g., *In re Santa Fe Nat. Tobacco Co. Mktg. & Sales Pracs. & Prods. Liab. Litig.*, 288 F. Supp. 3d 1087, 1211 (D.N.M. 2017) (court may and did take judicial notice of documents obtained through FOIA request as matters of public record); *In re Am. Apparel, Inc. Shareholder Litig.*, 855 F. Supp. 2d 1043, 1064 (C.D. Cal. 2012) (same). 3. Defendant's Motion for Summary Judgment.

Defendants are entitled to summary judgment on some but not all of the claims against them. 3.1. Joint Venture Claims. Defendants argue that they are entitled to summary judgment in their favor on the claims seeking a declaratory judgment that Owens and Martin formed a joint venture (count I), for breach of fiduciary duties relating to the alleged joint venture (count III), and for an accounting as to Owens' ownership interest in the claimed joint venture (count VI).

The Court concludes that a reasonable jury could find in Plaintiff's favor on these claims, which means that Defendants are not entitled to summary judgment. A court may not grant summary judgment where, as here, "a reasonable jury could return a verdict for the nonmoving party." *Dennis v. Kaskel*, 79 Mass. App. Ct. 736, 741 (2011), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). -6- Although the complaint alleges that Owens and Martin entered into a "joint venture," Plaintiff argues in her opposition memorandum that Owens and the Defendants entered into a "partnership." For present purposes it appears that "nothing turns on the distinction." *Doiron v. Castonguay*, 401 Mass. 705, 707 (1988).

A "joint venture" is "similar to a partnership; it differs from a partnership in that it is ordinarily limited to a single enterprise," *National Sch. Bus. Serv., Inc. v. Comm'r of Dept. of Emp. & Training*, 49 Mass. App. Ct. 445, 453 n.13 (2000), or "to a single transaction," *Gurry v. Cumberland Farms, Inc.*, 406 Mass. 615, 623 (1990). "Generally the relationships between the parties to a joint venture are so similar to those of partners that their rights, duties, and liabilities are tested by similar or identical rules." *Doiron*, 401 Mass. at 707 n.2; accord *Berwin v. Cable*, 313 Mass. 431, 435 (1943).

That is why the Partnership Act, G.L. c. 108A, "is generally applicable to joint ventures by analogy, though it does not govern directly." *BPR Grp. Ltd. P'ship v. Bendetson*, 453 Mass. 853, 861 (2009), quoting *Doiron*, 401 Mass. at 707 n. 2.

The standards for determining whether parties formed a joint venture or a partnership are the same as well. A joint venture or a partnership is formed when the participants in a business enterprise intend to operate as joint venturers or partners who will share in all aspects of and responsibility for their shared business. *Shain Inv. Co., Inc. v. Cohen*, 15 Mass. App.

Ct. 4, 7–9 (1982) ("As among the parties, the existence of a partnership or a joint venture depends upon their intent to associate as such."). "In Massachusetts, factors indicating such an intent include an agreement among the participants for joint profits and a sharing of losses; a

contribution of money, assets, talents, etc., to a common undertaking; a joint property interest in the subject matter of the venture; and a right to participate in the control of the venture.” Gurry, 406 Mass. at 623–624.

Based on the evidence in the summary judgment record, a jury could find that Martin and Owens agreed to form a joint venture or partnership and to share profits and losses, and that Owens contributed talents and other assets to the venture.[3] A reasonable jury could therefore find Martin entered into a joint venture or partnership with Owens, either directly or through Martin’s company Crescent Hill Partners LLC (“CHP”).

[3] Defendants rely heavily on the declaration of Victoria Reen in arguing that Owens could not have contributed any assets to the alleged joint venture or partnership. But that declaration is not competent evidence for the reasons discussed above in § 2.1 of this decision. -7- Defendants argue that CHP could not itself constitute a joint venture because it was organized as a limited liability company under New York law.

Though correct, this argument is beside the point. Based on the summary judgment record, a reasonable jury could find that Martin was acting on behalf of CHP when he agreed to form a joint venture or partnership with Owens, and that therefore CHP, Martin, and Owens were all joint venturers. An LLC may form a partnership or joint venture with a natural person or with some other business entity. “A general partnership is merely ‘an association of two or more persons to carry on as co-owners a business for profit.’ ” *Largo Realty, Inc. v. Purcell*, 77 Mass. App.

Ct. 162, 164 (2010), quoting G.L. c. 108A, § 6(1). This statutory reference to “persons” that may form a partnership “may describe natural persons or ‘corporations, societies, associations and partnerships.’ ” *Cook v. Patient Edu, LLC*, 465 Mass. 548, 553 n.11 (2013), quoting G.L. c. 4, § 7. “In 1995, the Legislature enacted G.L. c. 156C, the Massachusetts Limited Liability Company Act, see G.L. c. 156C, § 1, and provided that ‘person,’ where such reference includes any partnership, ‘shall be deemed to include a limited liability company.’ ” *Id.*, quoting G.L. c. 156C, § 63(a).

Since by statute any “person” may form a partnership with another “person,” and the term “person” encompasses LLCs, it necessarily follows that an LLC like CHP may form a partnership—or, by analogy, form a joint venture—with a natural person like Owens. 3.2. Contract Claims. Defendants argue that if they are entitled to summary judgment on the joint venture claims discussed above then it necessarily follows that they are also entitled to summary judgment on the very similar claims in counts IV and V for breach of contract.

Since the Court has determined that Defendants are not entitled to summary judgment on the joint venture claims, then they have also not established any entitlement to summary judgment on the contract claims. 3.3. Employment Claims. Defendants are entitled to summary judgment as a

matter of law on Plaintiff's alternative claims that, if Owens was not a partner or joint venturer, then his Independent Contractor Agreement is not enforceable (count II) and Defendants are liable as joint employers for violating the Wage Act by not paying Owens in full for the hours that he worked during 2020 (count VIII) and by not paying him at least the required minimum wage (count IX).

It is undisputed that Owens informed Defendants of his hours worked by sending periodic invoices to CHP, during 2020 Owens sent invoices seeking -8- payments totaling \$75,168.33, and CHP paid Owens that amount in full. It is also undisputed that Owens kept no time records from which any additional invoice could have been created. Since the undisputed facts establish that CHP paid Owens the entire amount he requested during 2020, the Wage Act claim—which is based on unsupported allegations that Owens was not paid for all of his work during 2020—fails as a matter of law.

These facts also establish that Defendants are entitled to judgment as a matter of law on the minimum wage claim. Plaintiff is bound by the allegation in her complaint that Owens spent 1600 hours during 2020 working for CHP. See G.L. c. 231, § 87; *Adiletto v. Brockton Cut Sole Corp.*, 322 Mass. 110, 112 (1947). Dividing the total amount that CHP paid to Owens for work during 2020 (\$75,168.33) by the number of hours that Plaintiff said he worked that year (1600) produces an average hourly wage of \$46.98.

That is far above the \$12.75 per hour minimum wage established by G.L. c. 151, § 1. Finally, since the wage act and minimum wage claims fail as a matter of law, there is no actual controversy as to whether Owens' Independent Contract Agreement was enforceable. That claim for declaratory relief was merely a predicate for the wage act and minimum wage claims.

Without an actual controversy, Defendants are entitled to summary judgment dismissing count II. See *Alliance, AFSME/SEUI, AFL-CIO, v. Commonwealth*, 425 Mass. 534, 537- 539 (1997) (in absence of actual controversy between the parties, claim for declaratory relief under G.L. c. 231A must be dismissed); *Liakas v. Planning Bd. of Dracut*, no. 18-P-1059, 2019 WL 1324748, at *1 (Mass.

App. Ct. March 25, 2019) (affirming dismissal of action for declaratory relief on summary judgment for lack of actual controversy). 3.4. Unjust Enrichment Claim. Defendants are not entitled to summary judgment on the unjust enrichment claim in count VII. At the very least, there is a triable issue as to whether Defendants were unjustly enriched by letting Owens pay half the rent for CHP's office in Saratoga Springs, New York.

Though Defendants dispute that this ever happened, and Plaintiff has no supporting documentation, Plaintiff's deposition testimony that Owens told her half of CHP's rent was being deducted from his quarterly pay is competent evidence on the subject. Plaintiff may lawfully

testify about statements that Owens made to her in good faith before he died; that evidence is not -9- inadmissible either on the ground that it is hearsay or that it was part of a private conversation between two spouses who are married to each other.

See G.L. c. 233, § 65. This is a disputed issue of material fact that will have to be resolved at trial. 3.5. Chapter 93A Claim. Defendants argue that they are entitled to summary judgment on the claim under G.L. c. 93A in count X “because CHP paid Owens all amounts that he invoice[.]” Plaintiff does not seem to disagree, as she has not voiced any opposition to this aspect of the summary judgment motions.

Plaintiff says she “concedes that if her husband [Owens] was a partner or employee of Defendants, she cannot maintain a claim under c. 93A” (see S.J. Opp. at 18 n.8). But nowhere in her written opposition does Plaintiff oppose the granting of summary judgment on her c. 93A claim.

The Court finds that Plaintiff has waived any ground for opposing the grant of summary judgment on her c. 93A claim, and will therefore allow this aspect of the motion. A party that opposes a motion in the Superior Court must submit a memorandum “that includes a statement of reasons, with supporting authorities, that the motion should not be allowed.” Sup. Ct.

Rule 9A(a)(2). Failure to raise an argument or issue in a party’s written opposition to a summary judgment motion constitutes waiver. See *Cary v. New England Organ Bank*, 446 Mass. 270, 285 (2006) (issue waived where “plaintiffs never put the judge on notice that they opposed summary judgment on this theory”). ORDERS Defendant’s motion for summary judgment (docket no. 35) is allowed in part as to counts II, VIII, IX, and X of the amended complaint and is otherwise denied.

Plaintiff’s motion to strike the declaration of Victoria Reen (docket no. 41) is allowed. Defendant’s motion to strike summary judgment exhibit 25 and substitute a revised Form ADV (docket no. 43) is denied. The session clerk shall schedule a final pre-trial conference. /s/Kenneth W. Salinger
Justice of the Superior Court March 18, 2026