MASSACHUSETTS SUPERIOR COURT

Thrive Operations, LLC v. Gecko Robotics, Inc.

Thrive Operations · Decided March 25, 2026

SUMMARY

The Massachusetts Superior Court denied Thrive Operations, LLC's motions to dismiss Gecko Robotics, Inc.'s counterclaims and to strike affirmative defenses challenging early termination fees. The court held that Gecko plausibly alleged breach of contract, breach of the implied covenant of good faith and fair dealing, a violation of Massachusetts General Laws chapter 93A, and a Computer Fraud and Abuse Act violation. The court also held that the enforceability of the early termination fee provisions as liquidated damages or penalties could not be resolved on the pleadings.

CASE DETAILS

COURT	Massachusetts Superior Court
WRITING FOR THE COURT	Kenneth W. Salinger
JURISDICTION	Massachusetts Superior Court
DECIDED	March 25, 2026
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff Thrive Operations, LLC moved under Mass. R. Civ. P. 12(b)(6) to dismiss Gecko Robotics, Inc.'s counterclaims and separately moved to strike Gecko's affirmative defenses asserting that contractual early termination fees were unenforceable penalties.
STANDARD OF REVIEW	On a Mass. R. Civ. P. 12(b)(6) motion, the court assumes the factual allegations are true and draws every reasonable inference in favor of the nonmoving party; the allegations must plausibly suggest an entitlement to relief. A motion to strike the affirmative defenses was evaluated on the pleadings, with the court concluding that enforceability of the liquidated-damages provisions turned on factual questions not resolvable at that stage.
PRECEDENTIAL VALUE	Published Massachusetts Superior Court opinion; the provided metadata identifies it as published.
PARTIES	Thrive Operations, LLC v. Gecko Robotics, Inc.

TOPICS

motions to dismiss · affirmative defenses · breach of contract · implied covenant of good faith · liquidated damages

PRACTICE AREAS

civil procedure · contracts · commercial litigation · consumer protection · remedies · computer law

QUESTIONS PRESENTED

1. Whether Gecko's counterclaim for breach of contract plausibly alleged sufficient notice of Thrive's alleged breaches before termination.
2. Whether Gecko plausibly alleged that Thrive breached the implied covenant of good faith and fair dealing by asserting early termination fees.
3. Whether Gecko plausibly alleged an unfair or deceptive act under G.L. c. 93A based on the alleged bad-faith conduct.
4. Whether Gecko plausibly alleged a civil claim under the Computer Fraud and Abuse Act based on continued access to its computer systems after authorization was revoked.
5. Whether the affirmative defenses challenging the early termination fees as unenforceable penalties could be stricken on the pleadings.

HOLDINGS

1. The counterclaim plausibly suggested that Gecko gave Thrive sufficient notice of its alleged contractual breaches, and the MSA did not clearly require identification of each specific Service Order or supporting documentation as an express condition precedent to termination.
2. Gecko's allegations plausibly suggested that Thrive breached the implied covenant by refusing to honor Gecko's alleged for-cause termination and threatening to enforce early termination fees despite an allegedly inapplicable or unenforceable fee provision.
3. Gecko's allegations plausibly stated a claim for an unfair or deceptive act under G.L. c. 93A because the alleged bad-faith conduct underlying the implied-covenant claim could also constitute an unfair trade practice.
4. Gecko's allegations plausibly stated a CFAA claim because continued access by Thrive's software agents after Gecko revoked authorization could constitute access without authorization, including indirect access through previously installed agents.
5. The affirmative defenses could not be stricken because whether the early termination fees were enforceable liquidated damages or unenforceable penalties depended on factual questions concerning the parties' circumstances at contract formation.

KEY QUOTATIONS

> *"The Court will deny the motion to dismiss the counterclaims because the factual allegations made by Gecko plausibly suggest that it may be entitled to relief under any or all of its causes of action."* (1)

> *“The covenant of good faith and fair dealing imposes a duty to carry out a contract without taking “an extreme and unwarranted view of [one’s] rights under the contract.””* (4)

> *“Since there is ‘no bright line separating an agreement to pay a reasonable measure of damages from an unenforceable penalty clause,’ the reasonableness of the measure of anticipated damages depends on the circumstances of each case.”* (7)

FACTUAL BACKGROUND

Gecko retained Thrive to provide managed cybersecurity services under a Master Services Agreement and a series of Service Orders. In February 2025, Gecko notified Thrive of alleged deficiencies, including inadequate responses to information-security audit requests, poor trouble-ticket response rates, unresolved tickets marked closed, and endpoint-protection shortfalls. Thirty days later, Gecko terminated the contracts, revoked Thrive's authorization to access its systems, and demanded removal of Thrive's software agents; Gecko alleged that the agents continued accessing and transmitting system information after authorization was revoked. Thrive treated Gecko's termination as either nonrenewal or an early termination subject to early termination fees, and then stopped paying Thrive's invoices.

PROCEDURAL HISTORY

Gecko retained Thrive to provide managed cybersecurity services under a Master Services Agreement and Service Orders. After Gecko notified Thrive of alleged breaches, terminated the contracts, revoked Thrive's system access, and stopped paying invoices, Thrive sued for breach of contract, breach of the implied covenant, and unjust enrichment. Gecko asserted counterclaims for breach of contract, breach of the implied covenant, violation of G.L. c. 93A, and violation of the CFAA, along with affirmative defenses challenging the early termination fees. The Superior Court denied both motions.

DISPOSITION

other

CASES CITED

- Herbert A. Sullivan, Inc. v. Utica Mut. Ins. Co., 439 Mass. 387, 395-396 (2003)
- Abrams v. Factory Mut. Liab. Ins. Co., 298 Mass. 141, 143 (1937)
- Standard Paper & Merchandise Co. v. City of Springfield, 356 Mass. 475, 476 (1969)
- Kelley v. J.A. Laraway, 223 Mass. 182, 184 (1916)
- Massachusetts Port Auth. v. Johnson Controls, Inc., 54 Mass. App. Ct. 541, 544 (2002)
- Massachusetts Mun. Wholesale Elec. Co. v. Town of Danvers, 411 Mass. 39, 46 (1991)
- MassPort v. Johnson Controls, supra
- Halstrom v. Dube, 481 Mass. 480, 483 n.8 (2019)
- Weiler v. PortfolioScope, Inc., 469 Mass. 75, 82 (2014)
- Druker v. Roland Wm. Jutras Assocs., Inc., 370 Mass. 383, 385 (1976)

- A.L. Prime Energy Consultant, Inc. v. Massachusetts Bay Transp. Auth., 479 Mass. 419, 434 (2018)
- Robert and Ardis James Foundation v. Meyers, 474 Mass. 181, 189, 191 (2016)
- Owen v. Kessler, 56 Mass. App. Ct. 466, 471 (2002)
- Massachusetts Employers Ins. Exchange v. Propac-Mass, Inc., 420 Mass. 39, 43 (1995)
- Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc., 68 Mass. App. Ct. 582, 605-606 (2007)
- Community Builders, Inc. v. Indian Motorcycle Assocs., Inc., 44 Mass. App. Ct. 537, 559 (1998)
- Rafferty v. Merck & Co., Inc., 479 Mass. 141, 147 (2018)
- United States v. Eddings, 161 F.4th 199, 205 (3d Cir. 2025)
- LVRC Holdings LLC v. Brekka, 581 F.3d 1127, 1135 (9th Cir. 2009)
- Facebook, Inc. v. Power Ventures, Inc., 844 F.3d 1058, 1067 (9th Cir. 2016)
- Bowen v. Porsche Cars, N.A., Inc., 561 F. Supp. 3d 1362, 1369 (N.D. Ga. 2021)
- Florida Atlantic Univ. Bd. of Trustees v. Parsont, 465 F. Supp. 3d 1279, 1291 (S.D. Fla. 2020)
- Teva Pharmaceuticals USA, Inc. v. Sandhu, 291 F. Supp. 3d 659, 671 (E.D. Pa. 2018)
- NPS, LLC v. Minihane, 451 Mass. 417, 419-421 (2008)
- Cummings Props., LLC v. National Communications Corp., 449 Mass. 490, 494 (2007)
- Kelly v. Marx, 428 Mass. 877, 878, 880 & n.6, 882 n.6 (1999)
- Lynch v. Andrew, 20 Mass. App. Ct. 623, 628 (1985)
- Honey Dew Assocs., Inc. v. M & K Food Corp., 241 F.3d 23, 28 (1st Cir. 2001)
- TAL Financial Corp. v. CSC Consulting, Inc., 446 Mass. 422, 423, 431 (2006)

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