

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-12522

MARY COSTELLO¹ & another² vs. MERRILL
LYNCH CREDIT CORPORATION.^{3,4}

October 17, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

Mary Costello and Bahig Bishay (Bishays) appeal from a judgment of the county court denying their petition for relief under G. L. c. 211, § 3. The Bishays were the defendants in a summary process action commenced in the District Court by Merrill Lynch Credit Corporation, whose successor in interest is Bank of America, N.A. (bank). The Bishays filed an answer and counterclaim and, several months later,⁵ filed a motion to amend their answer to assert new defenses and counterclaims and, for the first time, to request a jury trial. That motion was denied. After a bench trial, a judge in the District Court found for the bank and awarded it possession but no damages. The Appellate Division of the District Court affirmed the judgment, including the order denying the motion to amend, as did a panel of the Appeals Court, and we denied further

¹ Also known as Mary Bishay.

² Bahig Bishay.

³ Now known as Bank of America, N.A.

⁴ The petitioners also named the Appeals Court as a respondent. The court is a nominal party only. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996).

⁵ The case in the District Court was stayed pending the resolution of a case in the Land Court concerning title to the same property.

appellate review. Merrill Lynch Credit Corp. v. Costello, 92 Mass. App. Ct. 1113 (2017), S.C., 479 Mass. 1107 (2018). While the Bishays' application for further appellate review was pending, they filed their G. L. c. 211, § 3, petition, seeking relief from the denial of their motion to amend. A single justice of this court denied relief on the ground that the Bishays had, and were pursuing, an avenue of relief in the ordinary appellate process.

The Bishays have filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a party challenging an interlocutory ruling of the trial court to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." S.J.C. Rule 2:21 (2). That rule does not apply here, as the case in the District Court has gone to final judgment. See Carrington v. Commonwealth, 473 Mass. 1015, 1015 (2015). Nevertheless, it is clear that the Bishays' claims could be and were raised in the ordinary appellate process. Contrary to the Bishays' suggestion, the fact that further appellate review is granted only in our discretion does not render the appellate process inadequate. "The court's extraordinary power of general superintendence under c. 211, § 3, is 'exercised sparingly, not as a substitute for the normal appellate process or merely to provide an additional layer of appellate review after the normal process has run its course.'" Id., quoting Doyle v. Commonwealth, 472 Mass. 1002, 1003 (2015). See Votta v. Police Dep't of Billerica, 444 Mass. 1001, 1001 (2005). The single justice correctly denied extraordinary relief.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Mary Costello, pro se.
Bahig Bishay, pro se.