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SJC-12794

JAMES B. BIGELOW & others¹ vs. MASSACHUSETTS COURTS PROMULGATOR OF THE OFFICIAL FORMS & others.²

May 28, 2020.

¹ Annette S. Bent, Linda Boguslav, Bruce Boguslav, Steven Bourassa, Jennifer Guzman-Gayflor, Edward A. Higgott, Cheryl LeBlanc, Christine Mackenzie, William Marks, Debra McCarthy, Keith McKenzie, Paulette McKenzie, Janet L. Montgomery, Cudjoe Ofosu, Mychelyne Oliveira, Susan Osborne, Linda Potter, Brian Potter, Phyllis Prempeh, Thomas Saxe, Sherry Stanley, Tracey Tobin, Maria Valle, Steven Wilbur, and R. Susan Woods.

² Trial Court; Appeals Court; Reem Property, LLC; BLB Trading, LLC; Deutsche Bank National Trust Company, as trustee on behalf of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-R10; Fannie Mae; PROF-2013-S3 Legal Title Trust II by U.S. Bank, N.A., as legal title trustee; CitiBank, N.A., as trustee for PMT NPL Financing 2015-1; U.S. Bank, N.A., as Trustee on behalf of Bear Stearns Asset-Backed Securities 1 Trust 2005-AC2, Asset-Backed Certificates, Series 2005-AC2; Wells Fargo Bank, N.A., as trustee of Option One Mortgage Loan Trust 2007-3, Asset-Backed Certificates, Series 2007-3; HSBC Bank USA, N.A., as trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2004-OP1 Asset-Backed Pass-Through Certificates; Lisa Y. Barron; Rose Alvarado, LLC; Michael C. Jardus, trustee of the Edward C. Jardis Living Trust et al.; Peter Natsios, trustee of the Armandale Street RT; U.S. Bank Trust, N.A., as trustee for LSF9 Master Participation Trust; Wells Fargo Bank, N.A., as trustee for GMACM Mortgage Loan Trust 2006-AR1; WF Master REO 2015-01, LLC; Martin Amaya Barraza, manager of Alinas Real Estate, LLC.

Summary Process, Appeal. Practice, Civil, Summary process, Appeal, Bond. Supreme Judicial Court, Superintendence of inferior courts.

The plaintiffs appeal from a judgment of a single justice of this court denying their complaint for relief in the nature of mandamus and for extraordinary relief pursuant to G. L. c. 211, § 3. We affirm.

Each of the plaintiffs is or was a defendant in a post-foreclosure summary process action in the Housing Court Department or District Court Department of the Trial Court. In each such case, after an adverse judgment in the trial court, the plaintiff was required to post an appeal bond, to make periodic use and occupancy payments, or both, during the pendency of his or her summary process appeal. In each case, the plaintiff sought and obtained review of the bond or "use and occupancy" order, from either a single justice of the Appeals Court or from the District Court Appellate Division, as appropriate, and in each case the order was affirmed.

The plaintiffs then collectively filed this complaint for relief in the nature of mandamus and for extraordinary relief pursuant to G. L. c. 211, § 3, in the county court, seeking relief from the various bond and "use and occupancy" orders. The plaintiffs also filed a motion for a preliminary injunction and emergency stay in the county court. The single justice ultimately denied all substantive relief sought and denied a subsequent motion for reconsideration. The plaintiffs now appeal.

"Regardless of whether relief is requested in the nature of certiorari or mandamus, or by means of the court's extraordinary power of general superintendence, relief is available only where the petitioner demonstrates the absence of an adequate and effective alternative remedy." Wallace v. PNC Bank, N.A., 478 Mass. 1020, 1020 (2018), and cases cited. "Decisions of a single justice will not be disturbed on appeal absent clear error of law or abuse of discretion." Adjartey v. Central Div. of the Housing Court Dep't, 481 Mass. 830, 833 (2019), quoting Fogarty v. Commonwealth, 406 Mass. 103, 106 (1989).

In the case of an order requiring a tenant or occupant in a summary process action to post a bond pending appeal, to pay periodic "rent" or "use and occupancy" payments pending appeal, or both, review is available in the form of an appeal to a

single justice of the Appeals Court (if the order was made in the Housing Court) or to the District Court Appellate Division (if the order was made in the District Court). See G. L. c. 239, §§ 5 & 6.

Here, the plaintiffs do not dispute that they availed themselves of this opportunity for review. To the extent they wished to challenge the bond or use and occupancy orders further, "[t]he proper course for [them] to have followed . . . was to refuse to pay the bond, suffer the dismissal of [their] summary process appeal[s], and then appeal to the Appeals Court (on the limited bond issue) from the order of dismissal." Matter of an Appeal Bond (No. 1), 428 Mass. 1013, 1013 (1998) (collecting cases). See Wallace, supra at 1021 (quoting same).

The plaintiffs were not entitled as of right to an additional layer of review of the bond and use and occupancy orders in this court, whether through a complaint for relief in the nature of mandamus or through a petition for extraordinary relief pursuant to G. L. c. 211, § 3. See Wallace supra at 1020; Votta v. Police Dep't of Billerica, 444 Mass. 1001, 1001 (2005).

We have reviewed all of the plaintiffs' other claims on appeal as well. None of them requires further discussion. The single justice was correct to deny relief on all of them.

Judgment affirmed.

The case was submitted on briefs.

James B. Bigelow, Annette S. Bent, Linda Boguslav, Bruce Boguslav, Steven Bourassa, Jennifer Guzman-Gayflor, Edward A. Higgott, Cheryl LeBlanc, Christine Mackenzie, William Marks, Debra McCarthy, Keith McKenzie, Paulette McKenzie, Janet L. Montgomery, Cudjoe Ofosu, Mychelyne Oliveira, Susan Osborne, Linda Potter, Brian Potter, Phyllis Prempeh, Thomas Saxe, Sherry Stanley, Tracey Tobin, Maria Valle, Steven Wilbur, & R. Susan Woods, pro se.

Robert J. Durant, Jr., & Stephanie Sprague for Deutsche Bank National Trust Company & another.

Kevin P. Polansky for Citibank, N.A.

Brett L. Messinger, of Pennsylvania, & James C. Carignan for Wells Fargo Bank, N.A.