

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports.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; SJCRreporter@sjc.state.ma.us

SJC-12832

DONALD PERRY vs. U.S. BANK TRUST, N.A., trustee.¹

May 26, 2020.

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

Donald Perry (petitioner) filed a petition in the county court pursuant to G. L. c. 211, § 3. He sought review of an order of a Housing Court judge denying his motion for waiver of an appeal bond, setting the bond, and ordering payment of use and occupancy during the pendency of the petitioner's appeal from an adverse summary process judgment. See G. L. c. 239, §§ 5, 6. A single justice of this court denied the petition. We affirm.

A single justice properly denies relief under G. L. c. 211, § 3, "where there are [other] adequate and effective routes . . . by which the petitioning party may seek relief." Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019 (1996). In this case, the petitioner sought and received review of the Housing Court judge's order from a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5. To the extent the petitioner wished further to challenge the order, he could have "refuse[d] to pay the bond, suffer[ed] the dismissal of [his] summary process appeal, and then appeal[ed] 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). The petitioner also could have -- as he did here -- pay the bond and proceed with his direct appeal from the summary

¹ For LSF9 Master Participation Trust.

process judgment in the Appeals Court. He is free to raise his claims concerning the bond and the use and occupancy payments in that proceeding. See generally Cambridge Street Realty, LLC v. Stewart, 481 Mass. 121, 126 (2018) (considering merit of both summary process judgment and appeal bond order).

The single justice neither erred nor abused her discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

The case was submitted on briefs.
Donald Perry, pro se.
Jason MacKeen for the respondent.