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SJC-12940

KELECHI LINARDON vs. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & another.<sup>1</sup>

July 31, 2020.

Supreme Judicial Court, Appeal from order of single justice.  
Contempt. Practice, Civil, Contempt.

The plaintiff, Kelechi Linardon, filed a complaint in the county court seeking declaratory and injunctive relief and damages against the Boston Housing Authority (BHA) and the United States Department of Housing and Urban Development (HUD), based on a claim of discrimination in housing on account of her disability and race. She alleged violation of several Federal and State statutes and constitutional provisions. The single justice transferred the complaint to the Superior Court. See G. L. c. 211, § 4A.

The Superior Court docket indicates that, shortly after the case was entered there, HUD filed a notice of removal in the United States District Court for the District of Massachusetts, see 28 U.S.C. §§ 1442, 1446; the case was then removed to the Federal court; and further proceedings in the Superior Court were stayed accordingly. See 28 U.S.C. § 1446(d) (State court "shall proceed no further" with case after procedural requirements for removal have been satisfied). Thereafter, the Federal court dismissed the claims against HUD and remanded the claims against the BHA to the Superior Court.

While the case was pending in the Federal court, before being sent back to the Superior Court, the plaintiff filed a motion in the county court asking the single justice to find the

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<sup>1</sup> Boston Housing Authority.

defendants and the Superior Court in contempt of the G. L. c. 211, § 4A, transfer order. The single justice denied that motion without a hearing, and the plaintiff appealed from that ruling. The sole, very limited question before us, therefore, is the correctness of the single justice's order denying the motion for contempt.<sup>2</sup>

There was no error or abuse of discretion in the single justice's order. To hold a party in contempt, "there must be a clear and unequivocal command and an equally clear and undoubted disobedience." Parker v. Commonwealth, 448 Mass. 1021, 1022 (2007), quoting Nickerson v. Dowd, 342 Mass. 462, 464 (1961). In assessing whether that has occurred, we "look[] to the precise words of the order itself." Parker, supra, quoting Newell v. Department of Mental Retardation, 446 Mass. 286, 305, cert. denied, 549 U.S. 823 (2006). The single justice's initial order merely transferred the complaint to the Superior Court. We do not read it as being intended to mean that the case could not thereafter be removed to the Federal court -- indeed, it is doubtful the single justice would have had the authority so to order -- or to mean, as has since happened, that the case could not later be transferred to the Housing Court. In short, the single justice's order was not a "clear and unequivocal command" that the case could be decided by the Superior Court and the Superior Court only.

HUD did not act improperly when, after the transfer of the case to the Superior Court, it exercised its right to remove the case to Federal court.<sup>3</sup> And, once the procedural steps predicate to the removal were complete, the Superior Court had no jurisdiction to proceed further. See Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988), citing Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882). When a case is removed to Federal court, the jurisdiction of the State court

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<sup>2</sup> The plaintiff has asked for a hearing, which we take to mean an oral argument, before the full court. That request is denied. Having reviewed her brief and the record appendix, we decide this case without oral argument as we have done with several other cases recently in light of the COVID-19 pandemic.

<sup>3</sup> Likewise, the BHA did not violate the single justice's order when, following the Federal court's remand of the case to the Superior Court, it sought to have the case transferred to the Housing Court. See G. L. c. 185C, §§ 3, 20. The single justice's order did not clearly and unequivocally preclude that course.

"absolutely cease[s]," and that of the Federal court "immediately attache[s]." Steamship Co., supra. See Garden Homes, Inc. v. District Court of Somerville, 336 Mass. 432, 435 (1957). The removal thus effectively disposed of the case in the Superior Court, and the Superior Court cannot be faulted for not proceeding further with it. In short, there was no basis for finding a contempt in these circumstances.

While the plaintiff's appellate brief continues to press the discrimination and civil rights claims she raised in her underlying complaint, those claims are not properly before us at this juncture, and we therefore express no view on them. As stated, the only question properly before us with the case in this posture is the correctness of the denial of the motion for contempt. As to that, there was no error or abuse of discretion.

Order denying motion for  
contempt affirmed.

The case was submitted on briefs.  
Kelechi Linardon, pro se.  
Michael J. Louis & Angela Marcolina for Boston Housing  
Authority.