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SJC-13076

BAHIG BISHAY vs. SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT.

April 14, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Bahig Bishay, appeals from a judgment of a single justice of this court denying his petition under G. L. c. 211, § 3. We affirm.

In 2016, Bishay and National Investigations, Inc. (National), filed a petition in the county court seeking relief pursuant to G. L. c. 211, § 3, and relief in the nature of mandamus pursuant to G. L. c. 249, § 5. They asked the court to order the clerk of the Superior Court in Norfolk County to enter a final judgment in certain proceedings in that court. See Bishay v. Clerk of the Superior Court in Norfolk County, 476 Mass. 1017, 1017-1018 (2017). The proceedings involved claims by Bishay against several parties, including National. See id. at 1017. Although Bishay and National purported to enter into a settlement of the claims between them and moved for entry of final judgment on that basis, the other parties involved opposed the motion and a judge denied it. See id. at 1017-1018. That denial prompted the petition in the county court. A single justice denied it, and the petitioners appealed. See id. at 1018. As set forth in our decision affirming the single justice's judgment, the petitioners had failed to demonstrate, as they were required to do pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), that "review of the trial court decision [could not] adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." See Bishay, supra, quoting S.J.C. Rule 2:21 (2). In other words, the petition failed because there existed an adequate alternative remedy.

It appears that Bishay next filed a belated petition in the Appeals Court under G. L. c. 231, § 118, first par., seeking essentially the same relief, but because that petition was untimely, a single justice of the Appeals Court denied it.¹ Bishay also eventually filed a notice of appeal from the final judgment in the trial court. The Appeals Court affirmed the judgment, and we denied Bishay's subsequent application for further appellate review. See Bishay v. National Investigations, Inc., 98 Mass. App. Ct. 1107, S.C., 486 Mass. 1109 (2020).

Undeterred, and notwithstanding the fact that we have previously cautioned him against filing groundless petitions in the county court, see infra, Bishay then filed his current petition, again pursuant to G. L. c. 211, § 3, and G. L. c. 249, § 5, asking the court to direct the trial court to either "enter the Agreement for Judgment" or schedule a trial. The single justice denied the petition without a hearing, and Bishay appeals. Bishay is not entitled to relief. He argues that he has exhausted all of his other remedies and that, as a court of "last resort," we must act. This argument misses the point. That he was unsuccessful -- that his petition pursuant to G. L. c. 231, § 118, first par., was denied; that the trial court's judgment was later affirmed on appeal; and that his application for further appellate review was denied -- does not entitle him to relief pursuant to G. L. c. 211, § 3. Our general superintendence power is intended for situations where a petitioner has no adequate alternative remedy, not where an adequate alternative exists that a petitioner fails to pursue or pursues unsuccessfully. See, e.g., Votta v. Commonwealth, 444 Mass. 1001, 1001 (2005) ("Our general superintendence power cannot be invoked simply to get another bite of the apple"). The single justice thus did not err or abuse his discretion in denying relief.

As we have noted, this is not the first time that Bishay has filed a petition that was destined to fail because of an adequate alternative remedy. See Bishay v. Superior Court Dep't, 480 Mass. 1033 (2018); Bishay v. Merrill Lynch Credit Corp., 480 Mass. 1028 (2018); Costello v. Merrill Lynch Credit

¹ Although National Investigations, Inc., initially appeared with Bahig Bishay as a petitioner in the county court and in this court, all of the subsequent proceedings discussed herein were brought by Bishay only.

Corp., 480 Mass. 1027 (2018); Bishay v. Land Court Dep't of the Trial Court, 477 Mass. 1032 (2017); Bishay v. District Court Dep't of the Trial Court, 477 Mass. 1030 (2017); Bishay v. Clerk of the Superior Court in Norfolk County, 476 Mass. 1017 (2017). In each of those cases, the single justice denied Bishay's petition, he appealed to the full court, and we explained that he was not entitled to extraordinary relief from this court in the face of an adequate alternative. And indeed, given his repeated petitions in such circumstances, we cautioned in one of our earlier decisions that we might, at some point in the future, issue an order requiring him to seek approval prior to filing any further petitions if he continued to misuse the process. Bishay v. Land Court Dep't of the Trial Court, 477 Mass. at 1032 n.1.² Despite that warning, Bishay has continued to file petitions and pursue appeals -- including the petition and appeal in this case -- that were doomed to fail because of adequate alternative remedies. See Bishay v. Superior Court Dep't, *supra*; Bishay v. Merrill Lynch Credit Corp., *supra*; Costello, *supra*.

Accordingly, the judgment of the single justice denying Bishay's petition is affirmed, and as we have ordered with respect to other litigants who have repeatedly filed groundless petitions after being cautioned against doing so, "[t]he clerk of this court for Suffolk County and the clerk for the Commonwealth are instructed not to accept any new petition or appeal from this petitioner that seeks extraordinary relief, by way of G. L. c. 211, § 3, or otherwise, unless it is accompanied by a motion for leave to file, and shall not docket the petition or appeal unless and until the full court grants the motion on making a preliminary determination that the petitioner has no other adequate remedy and that he has furnished the court with a record that substantiates his claims." Watson v. Justice of the Boston Div. of the Hous. Court Dep't, 458 Mass. 1025, 1027 (2011). "In seeking leave to file a new petition or appeal, [Bishay] will also be required to demonstrate to the satisfaction of the court that the proper parties have been named (see S.J.C. Rule 2:22, 422 Mass. 1302 [1996]); that proper service has been or will be made; [and,] in the case of an appeal, that the appeal is timely; and he shall indicate whether any appeal is subject to the provisions of S.J.C. Rule 2:21" Id. at 1027 n.4.

² We note that the Superior Court has already issued such an order, which was the subject of one of Bishay's earlier G. L. c. 211, § 3, petitions in this court. Bishay v. Land Court Dep't of the Trial Court, 477 Mass. 1032 (2017).

So ordered.

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

Bahig Bishay, pro se.