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SJC-13205

CHRISTINA GALARZA vs. CHRISTOPHER BARROSO & another.<sup>1</sup>

February 4, 2022.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Christina Galarza, appeals from a judgment of a single justice of this court denying her petition pursuant to G. L. c. 211, § 3. We affirm.

Pursuant to G. L. c. 239, § 5 (f), Galarza sought review by an Appeals Court single justice of an order of a Housing Court judge denying her motion to waive the appeal bond in connection with her appeal from an adverse judgment in an underlying summary process action. The Appeals Court single justice affirmed the judge's refusal to waive the appeal bond, and Galarza thereafter filed her G. L. c. 211, § 3, petition. A single justice of this court denied the petition, noting that Galarza had an adequate alternative remedy: she could have refused to pay the bond, suffered the dismissal of the summary process appeal, and then appealed from the order of dismissal to the Appeals Court on the bond issue. See Matter of an Appeal Bond (No. 1), 428 Mass. 1013 (1998).

Galarza has now filed what appears to have been intended as a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), even though she is not challenging an interlocutory ruling of the trial court. It is clear from what she has filed that she is not entitled to the relief she is currently seeking. According to Galarza, the appeal bond has since been paid through a "personal loan." She is currently asking us to review the denial of her motion to

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<sup>1</sup> Katrina Pimentel.

waive the bond anyway, so that she can immediately recoup the bond amount and repay the loan now instead of later. There is no right to have that kind of review. If Galarza is successful in her appeal in the underlying summary process action, the amount she has posted will be returned to her at that time. But having made the choice to post the bond, rather than exercise her right to refuse to post a bond and follow the procedure outlined in Matter of an Appeal Bond (No. 1), 428 Mass. at 1013, she is not entitled to return of the bond before prevailing on her appeal. One who is required to post a bond, who moves unsuccessfully in the trial court to have the bond waived, and who then unsuccessfully challenges the trial court's adverse ruling via the statutorily prescribed procedure (in this case, an appeal to a single justice of the Appeals Court, see G. L. c. 239, § 5 [f]), cannot pay the bond yet continue to litigate the matter as a matter of right in this court under G. L. c. 211, § 3.

Judgment affirmed.

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

Christina Galarza, pro se.