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SJC-13452

CUMMINS REALTY TRUST vs. FRANK O'NEILL.

October 13, 2023.

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

The petitioner, Frank O'Neill, filed a petition in the county court, pursuant to G. L. c. 211, § 3, seeking relief from an order of the Housing Court requiring him to make use and occupancy payments. A single justice of this court denied the petition, and O'Neill appealed. We affirm.

Background. On December 21, 2022, O'Neill filed a timely notice of appeal from the entry of final judgment in favor of Cummins Realty Trust in a summary process action. A judge in the Housing Court granted O'Neill's motion to waive the appeal bond and ordered him to pay monthly use and occupancy payments in the amount of \$1,200 during the pendency of his appeal. O'Neill failed to make any such payments.

O'Neill subsequently sought interlocutory review of the use and occupancy order before a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5 (f). The single justice affirmed. Thereafter, the Housing Court ordered O'Neill to tender three months of outstanding use and occupancy payments by May 16, 2023, warning that failure to comply would result in the dismissal of his substantive appeal from the judgment in the summary process action. On the same date, O'Neill filed the instant petition in the county court, seeking a reduction in the monthly use and occupancy payments from \$1,200 to one hundred dollars. That petition was denied.

On May 16, 2023, the deadline for tendering the outstanding use and occupancy payments, O'Neill filed a motion in the county court requesting a ten-day extension of the deadline either to "explore" appealing from the use and occupancy order in the Federal District Court or to finish moving out of the residence. The single justice denied the motion, and this appeal followed.

Discussion. A single justice properly denies relief under G. L. c. 211, § 3, "where the petitioning party has or had adequate and effective avenues other than G. L. c. 211, § 3, by which to seek and obtain the requested relief" (citation omitted). Marnerakis v. Phillips, Silver, Talman, Aframe & Sinrich, P.C., 445 Mass. 1027, 1027 (2006). Here, the petitioner sought review of the use and occupancy order from a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5 (f). He was "not entitled as of right to an additional layer of review of the . . . use and occupancy order[] in this court." Bigelow v. Massachusetts Courts Promulgator of Official Forms, 484 Mass. 1056, 1057 (2020). Accordingly, the single justice did not err or abuse her discretion in denying relief under G. L. c. 211, § 3.¹

Judgment affirmed.

The case was submitted on briefs.

Frank O'Neill, pro se.

Robert D. Russo & Patrick J. Donnelly for the respondent.

¹ To the extent that O'Neill challenges the denial of his motion for a ten-day extension of the May 16, 2023, deadline, which he does not contend would have enabled him to comply with the order, the issue is moot.