

No. 18-A1351

19-6044
IN THE
Supreme Court of the United States

Janice Stevenson,

Petitioner,

U.

TND Homes LLC

Respondents.

FILED
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SUPREME COURT, U.S.

*On Petition for a Writ of Certiorari to the
Supreme Judicial Court of Massachusetts*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

- I. As applied, does Massachusetts General Law (MGL) c 239 Summary Process for Possession of Land Subrogate IRC § 26 U.S. Code §42(h)(6)(B) (vi) ("IRC §42") restriction of subject matter jurisdiction over "extended low-income housing commitment" (ELIHC) infringement actions?**
- II. Whether Ms. Stevenson is entitled to relief "to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. . . ." under Massachusetts General Law (MGL) c 239 § 8, Three years quiet possession; effect, the Civil Rights Act of 1866, the Thirteenth Amendment, the Fourteenth Amendment's Due Process Clause, Privileges and Immunities Clause, the Anti-Peonage Act of 1867, and the Supremacy Clause of the US Constitution?**

PARTIES TO THE PROCEEDING

Petitioner, Janice Stevenson (Ms. Stevenson) was plaintiff-appellant below.

Respondent, TND Homes I LLC, was defendant-appellees below. TND Homes I LLC is one of several limited liability corporations of managing partner, The Neighborhood Developers (TND). TND Homes I LLC is the current limited liability corporation (LLC) claiming tax credit for Walden House, a senior housing LIHTC apartment complex, consisting of seven apartments. The purposes of the LLC are to acquire, hold, invest in, and otherwise deal with affordable housing projects, engage in any and all activities related thereto and engage in any other business that a limited liability company may carry on under the laws of Massachusetts and specifically to acquire, develop and manage certain properties in Chelsea and Revere, Massachusetts for operation of residential dwelling units, and related facilities thereon for the primary benefit of low and moderate income families.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Janice Stevenson (“Ms. Stevenson”) respectfully petitions for a writ of certiorari to review the judgment of the Massachusetts Supreme Judicial Court.

OPINIONS BELOW

The decision of the Massachusetts Supreme Judicial Court is reported at 482 Mass. 1006 and reproduced at Pet. App. A1. The opinion of the Mass Appeal Court is unpublished but reproduced at Pet. App. A2

JURISDICTION

The judgment of the Massachusetts Supreme Court in TND Homes I LLC v Janice Stevenson was entered on April 22, 2019. The judgment of the Massachusetts Appeals Court was entered on August 16, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY RULES INVOLVED

This case involves the review of the validity of MGL c 239, summary eviction state statute as applied on the ground of its repugnancy to the Constitution denying important mandatory rights, jurisdictional rights, and federal due process rights; as well as its subrogation of 26 U.S. Code § 42 the Low Income Housing Tax Credit, a law of the United States.

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STATEMENT OF THE CASE

- I. As Applied MGL c 239 operates unconstitutionally as to Ms. Stevenson because of her particular circumstances *Tex. Workers' Comp. Comm'n v. Garcia, 893 S.W.2d 504, 518 (Tex. 1995)*

As applied, MGL c 239 is closely tailored to a compelling state governmental interest that directly conflicts with the intent of the US Congress for LIHTC tenants - limiting circumstance to evict LIHTC tenants and LIHTC tenants' right to enforce restrictive covenants. By contrast, MGL c 239 allows a landlord's claim for possession in a summary process action brought under G. L. c. 239, § 1A Meikle vs Nurse 474 Mass. 207.

As applied, MGL c 239 criminalize simple contractual breaches, in violation of the the Anti-Peonage Act of 1867. Monetary judgments found against the adult(s), responsible for contractual breaches, are also found against all children and/or other household members over the age of 18. If the monetary judgment is \$10,000 and one working adult is at fault but there are two adults with three children over 18, in the household; the landlord can report a cumulative judgment of \$50,000. The judgment creates a barrier to future housing.

Evicted for Life - how eviction court record information is exacerbating the housing crisis.

[<https://www.masslegalservices.org/content/evicted-life-how-eviction-court-record-information-exacerbating-housing-crisis>] The monetary judgment becomes an debt burden for a statutory period of 10 years.

Nearly half of LIHTC households are considered extremely low-income (earning less than 30 percent of the average median income (AMI), and another one-third are considered very low-income (earning between 30 percent and 50 percent of AMI). The median income of a household in a LIHTC assisted units is \$17,470; about 58 percent

of households make less than \$20,000 per year (HUD 2018). **The Low-Income Housing Tax Credit How It Works and Who It Serves**, https://www.urban.org/sites/default/files/publication/98758/lithc_how_it_works_and_who_it_serves_final_2.pdf

In *Williams v. Shaffer* (1967) No. 824, this Court wrote [dissenting opinion], "*It [The State] cannot consistently with the Equal Protection Clause provide a hearing in such a way as to discriminate against some 'on account of their property.'* *Griffin v People of State of Illinois, supre. 351 U.S. at 18, 76 S. Ct. at 590.*"

As applied, MGL c 239, violates the Supremacy Clause. To receive tax credits pursuant to IRC §42, low-income housing tax credit (LIHTC) landlords accept mandatory and jurisdictional rights prescribed in an extended low income housing commitment (ELIHC), known as a restrictive covenant that run with the land, recorded according to state law. The ELIHC provides important federal due process rights lacking in MGL c 239. This includes mandatory and jurisdictional rights of LIHTC tenants.

a. **MGL c 239 § 8, Three years quiet possession**

Ms. Stevenson had been a LIHTC tenant from February 01, 2012 until eviction of August 17, 2018.

Section 8. There shall be no recovery under this chapter of any land or tenements of which the defendant, his ancestors or those under whom he holds the land or tenements have been in quiet possession for three years next before the commencement of the action unless the defendant's estate therein is ended.

II. As Applied MGL c 239 Subrogates

Federal Due Process, Mandatory Rights, Jurisdictional Rights in violation of the Civil Rights Act of 1866, the Thirteenth Amendment, the Privileges and Immunities Clause of the Fourteenth Amendment, the Anti-Peonage Act of 1867, and the Supremacy Clause of the US Constitution.

Ms. Stevenson was injured by MGL c 239 and the injury was fairly traceable to the statute and redressible by this Court.

Ms. Stevenson was never given adequate notice by Respondent, via lease addendum or in writing of important federal due process rights for LIHTC tenants. The Due Process Clause of the Fourteenth Amendment to the United States Constitution should afford LIHTC tenants faced with termination of their tenancies due to landlord state action with notice of their LIHTC mandatory and jurisdictional rights and an opportunity, under their mandatory and jurisdictional rights, to be heard before their tenancies are terminated

As applied, MGL c 239 violates Ms. Stevenson's right to enforce important federal due process rights, mandatory rights and jurisdictional rights in a court of competent jurisdiction.

Ms. Stevenson became aware that state housing courts lacked subject matter jurisdiction MGL c 185C §3, over restrictive covenants during summary process litigation.

The Massachusetts Legislature gives concurrent jurisdiction over restrictive covenants to the Superior Court and the Land Court. MGL c 240 § 10A-10C.

Respondent's intentionally and knowingly file all LIHTC summary process cases in a state court, without competent jurisdiction. Except in limited

circumstances, US Congress' intent is for LIHTC tenants to stay housed.

In the Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (the declaration), which was recorded in Suffolk County, the Respondent acknowledged the obligations and restrictions imposed under the extended use agreement. Section 9.6 of the declaration provides:

Section 9.6 of Book 55474, Page 281, Document 851300, TND Homes I LLC Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants

9.6 The Grantor acknowledges that the primary purpose for requiring compliance by the Grantor with the restrictions provided in this Restriction is to assure compliance of the Project and the Grantor with Section 42 of the Code and the Applicable Regulations, and by reason thereof, the Granter in consideration for receiving DHCD's approval for the use of Low-Income Housing Tax Credits for this Project hereby agrees and consents that DHCD and any Individual who meets the Income limitation applicable under Section 42 of the Code (whether a prospective, present or former occupant} shall be entitled, for any breach of the provisions hereof, and In addition to all other remedies provided by law or In equity, to enforce specific performance by the Grantor of Its obligations under this Restriction In a court of competent jurisdiction. The Granter hereby further specifically acknowledges that the beneficiaries of the Grantor's obligations hereunder cannot be adequately compensated by monetary damages In the event of any default hereunder. In the event of a breach of this Restriction, the Granter shall reimburse DHCD for all costs and attorneys' fees incurred associated with such breach.

In Massachusetts, the legal process for evicting residential tenants is governed not by the common

law but by a statute law but by a statute (a very old statute – parts of it date from the 1700s).
Cummings Properties, LLC v. Cepoint Networks, LLC, et al, 78 Mass. App. Ct. 287.

The state court can limit claims in summary process proceedings on the grounds that Chapter 239 do not provide for them. Chapter 239 gives a landlord an expedited judicial procedure, called summary process, to recover possession of its property from a tenant whose tenancy has been terminated. The principal benefit of summary process is the relative speed with which landlords can recover possession of their properties. MGL c 239 pre-empts federal law and violates the Supremacy Clause of the US Constitution. LIHTC tenants and Ms. Stevenson's landlord-tenant relationship should be governed by IRS § 42 during summary process and restrictive covenant enforcement proceedings.

All subject matter challenges whether to the housing court judge, to the Chief Justice of the Trial Court, to the Appeals Court, to the Single Justice of the County Court, to the Supreme Judicial Court went unheeded.

The Commonwealth's Courts sought to preserve state rights of federal landlords than uphold federal laws and the US Constitution.

Massachusetts Legislature granted enforcement of restrictive covenants to the Superior Court and the Land Court MGL c 240 §10A.

After Ms. Stevenson challenged the subject matter jurisdiction of the Massachusetts housing court, the housing court entered a judgment on April 13, 2018.

Ms. Stevenson feels she was not given equal opportunity to keep her housing.

On July 25, 2018, Ms. Stevenson challenged subject matter jurisdiction of the Massachusetts housing court to a Single Justice (SJ) of the Massachusetts Supreme Judicial Court (County Court). SJ-2018-

0366. On August 16, 2019, the SJ issued its JUDGMENT: ... "This Court will not exercise its extraordinary power where relief is available through the normal appellate process."

On the July 30, 2018, Ms. Stevenson submitted an application to the Chief Justice (CJ) of the Trial Courts, to transfer the housing case, as the housing court's judgment was void for lack of subject matter jurisdiction, to land court; the CJ did not intervene.

Ms. Stevenson became aware of important due process rights for LIHTC tenants during legal research for the summary eviction litigation. Respondent never advised their LIHTC tenants, such as Ms. Stevenson, of important LIHTC due process rights in her lease or otherwise.

- a. Ms. Stevenson advised the housing court of the lack of subject matter jurisdiction to adjudicate recorded restrictive covenant, to no result.
- b. Ms. Stevenson sought intervention from the Chief Justice of the Trial Court regarding her challenge of the housing court subject matter jurisdiction of Massachusetts housing court, to no result.
- c. Ms. Stevenson sought pre eviction assistance from the Massachusetts Appeals Court challenging the subject matter jurisdiction of Massachusetts housing court to adjudicate LIHTC cases, to no avail.

Ms. Stevenson challenged the subject matter jurisdiction of Massachusetts housing court to adjudicate the mandatory extended low-income housing commitment, which is a recorded as a restrictive covenant, pursuant to state law.

The Massachusetts Legislature has mandated that recorded restrictive covenants that run with the land can only be enforced in Superior Court and the Land Court, pursuant to MGL c 240, sec 10A. Thus "mandatory rules are subject-matter jurisdictional rules." *Maxwell v. Dodd* (6th Cir. 09-2538 & 10-1663, Dec. 6, 2011).

“Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action.”
Melo v. US, 505 F2d 1026.

The Respondent is well aware of the mandatory and jurisdictional requirements of IRC 42; however, the Respondent wanted the “drive-by jurisdictional” (Arbaugh v. Y & H Corp., 546 U.S. 500 (2006)) expediency of state law to obtain possession of its federal LIHTC property without providing Ms. Stevenson jurisdictional enforcement, by LIHTC tenants, of the federally mandated restrictive covenants.

III. Reasons for Granting the Petition

The decision below conflicts with federal law, one or more state courts of last resort on an issue of exceptional importance to the nation's LIHTC owners, state financing agencies, the Internal Revenue Service, prospective, present, or former LIHTC occupants. Nationwide LIHTC is without adequate compliance monitoring at the state level and the federal level. Federal rights accorded to LIHTC tenants are subrogated for expedient state summary process evictions.

42 U. S. C. § 1982 statute applies to private as well as to state-authorized discrimination, **Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)**, or in the alternative state-authorized private discrimination. [*All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.*]

The federal law is IRC § 42, the Low Income Housing Tax Credit. The issue is of considerable national importance. The issue is one where uniformity counts - that the conflict is going to be difficult to live with; the decision below has a significant impact not just on the Ms. Stevenson but on a whole industry or large segment of the population.

This Court has held that 'A statutory requirement is considered jurisdictional if Congress "clearly states that [it] count[s] as jurisdictional"; a condition "not rank[ed]" as such should be treated "as nonjurisdictional in character." Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154 (2010)'

As applied and upheld by Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court, Massachusetts General Law (MGL c 239, Summary Process For Possession of Land, pre-empted IRC § 42 LIHTC in violation of the Civil Rights Act of 1866, the Thirteenth Amendment, the Fourteenth Amendment's Privileges and Immunities Clause, the Anti-Peonage Act of 1867, and the Supremacy Clause of the US Constitution.

IRC § 42(h)(6)(B)(ii) gives LIHTC tenants the right to enforce in any state court [of competent jurisdiction] the requirement and prohibitions of clause (i). MGL c. 185C, § 3 (1988 ed.), sets forth the scope of the Housing Court's jurisdiction. G.L.c. 185C, § 3, does not confer jurisdiction on the Housing Court to adjudicate recorded restrictive covenants (aka an extended low-income housing commitment) prescribed by IRC § 42(h)(6)(A). MGL c 240, §10A confer concurrent jurisdiction on the Land Court and Superior Court to adjudicate recorded restrictive covenants (aka an extended low-income housing commitment) prescribed by IRC § 42(h)(6)(A).

"Jurisdiction is authority to decide the case either way. Unsuccessful as well as successful suits may be brought." The Fair v. Kohler Die & Specialty, 228 U.S. 22, 25 (1913); see Steel Co., 523 U.S. at 90-93 (rejecting the argument that the elements of a cause of action must be met in order for jurisdiction to attach); Lauritzen v. Larsen, 345 U.S. 571, 574-75 (1953). The Massachusetts Supreme Judicial Court did not decide a subject matter jurisdiction question on the facts before it. Questions involving subject matter jurisdiction are different and more important than issues arising from typical transfers, thus justifying immediate appellate review. The question of subject matter

jurisdiction is a question of law for the court. See *Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 132 S.E.2d 18 (1963).

Massachusetts LIHTC tenants lose possessory interest in their homes without the right to challenge the compliance of an ELIHC for lack of good cause eviction agreement and/or enforce use restriction. ELIHCs are required to be recorded as a restrictive covenant. LIHTC property owners eschew jurisdictional rights of LIHTC tenants, in state courts without subject matter jurisdiction, for the speedy return of property that MGL c 239 summary eviction provides.

Under both the United States Constitution and the Massachusetts Declaration of Rights, "[t]he threshold issue in a procedural due process action is whether Ms. Stevenson had a constitutionally protected property interest at stake." *Perullo v. Advisory Comm. on Personnel Standards*, 476 Mass. 829, 840 (2017), citing *Mard v. Amherst*, 350 F.3d 184, 188 (1st Cir. 2003). Property interests "may derive from existing rules or independent sources, such as State law." *Perullo, supra*. Petitioner had a property interest in her LIHTC apartment, clothes, its furnishings, family visits, a safe middle-class neighborhood near train system, quiet enjoyment, etc.

The Massachusetts summary eviction statute provides that a landlord may oust a tenant in a very swift, expedient manner. The Respondent never advised Ms. Stevenson of important due process rights and intentionally filed in a state court without subject matter jurisdiction to pre-empt federal law. All attempts by Ms. Stevenson to raise subject matter jurisdiction was rejected by state court officials. This conflicts with IRC §42 careful analysis compels the conclusion that recorded restrictive covenant is a mandatory, a jurisdictional requirement.

CONCLUSION

For all the foregoing reasons, the judgment below should be vacated and the case remanded for further consideration of the objectors' appeal from the Massachusetts Supreme Judicial Court's final judgment vacating the housing court's judgment, and issuing a lis pendens.

Respectfully submitted,



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