

**SUPREME COURT OF THE UNITED STATES**

**OFFICE OF THE CLERK**

**WASHINGTON, DC 20543-0001**

**May 18, 2021**

RE: Ferraz v. Speicher

USAPI No. 19-2156

ATTN: Clayton R. Higgins, Jr.

**Motion to allow Petition to be filed for a Writ of Certiorari**

The underlying case is a condominium case filed in State Land Court. The Petitioner challenges the subject matter jurisdiction, personal jurisdiction and inherent power of the court to render a judgement against her. The case was filed against petitioner by another unit owner under trespass to common areas as a Try Title petition under M.G.L Chapter 185.

From the time a master deed is executed a condominium is under M.G.L 183A. Under applicable statute the Plaintiffs lacked constitutional standing to sue the Petitioner. The Land Court lacked subject matter jurisdiction to render judgement. Please see Petitioner's use rights enclosed described by a lawyer. The Land Court judgement is void under statute and it abrogates the Petitioner protections under the master deed and M.G.L Chapter 183A (The condominium act).

"...courts created by statute must look to the statute as the warrant for their authority; certainly, they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which may be clearly denied to them."<sup>1</sup>

The Petitioner went to U.S District Court which ruled that the Land Court judge is protected by the doctrine of Qualified Judicial Immunity. The Court of Appeals affirmed.

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<sup>1</sup> *Cary v. Curtis*, 3 How. 236, 245. See *Sheldon v. Sill*, 8 How. 441, 449; *Kentucky v. Powers*, 201 U.S. 1 (1906), 24.

The U.S District Court decision is void because when subject matter jurisdiction is lacking, the district court "has no power to do anything, other than to dismiss the action," and any order other than to dismiss is a nullity.

The United States Supreme Court in *Piper v. Pearson*, 2 Gray 120 cited in *Bradley v. Fisher*, 13 Wall. 335 20 L.Ed. 646 1872 "where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction."

If the District Court is asserting the Land Court judge had jurisdiction, the court must prove that jurisdiction exists. The District Court doesn't have standing to ignore the lack of subject matter jurisdiction of the Land Court judge<sup>2</sup>. The District court and the Court of Appeals contravened federal law when they invoked the doctrine of qualified judicial immunity. Both courts had no power to do anything other than to dismiss the Land Court judgement.

See *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 (1944) at 248:

Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired.

A litigant or the court can raise a defect in jurisdiction at any time, even after a court has entered judgment. See *Arbaugh v. y & H Corp.*, 546 US 500 (2006):

Rule 12(h)(3) instructs: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." See *Kontrick v. Ryan*, 540 U. S. 443, 455 (2004).

First, "subject-matter jurisdiction, because it involves the court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U. S. 625, 630 (2002). Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction

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<sup>2</sup> See *McNutt v. General Motors Acceptance Corp.*, 298 US 178 (1938) at 189, "The prerequisites to the exercise of jurisdiction are specifically defined and the plain import of the statute is that the District Court is vested with authority to inquire at any time whether these conditions have been met. They are conditions which must be met by the party who seeks the exercise of jurisdiction in his favor. He must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations, he has no standing."

exists, even in the absence of a challenge from any party.  
*Ruhrgas AG v. Marathon Oil Co.*, 526 U. S. 574, 583 (1999).

The Supreme Court dismissed a U.S District Court decision after 12 years under rule 60(b) for fraud, see *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 (1944):

In the promulgation of the Federal Rules of Civil Procedure this court took notice of the fact that terms of the district court vary in length and that the expiration of the term might occur very soon, or quite a longtime, after the entry of a judgment. In order to make the practice uniform, Rule 60-B provides: "On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, *but in no case exceeding six months after such judgment, order, or proceeding was taken.* . . . This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding. . . ." Thus there has been substituted for the term rule a definite time limitation within which a district court may correct or modify its judgments.

Both the U.S District court and the Court of Appeals acted without authority to enforce the void judgment from Land Court and therefore the U.S Supreme Court has an independent obligation to determine whether subject matter jurisdiction and personal jurisdiction exists in the Land Court judgment, and jurisdiction exists in the District Court judgment and in the Court of Appeals decision under rule 12(h)(3) and rule 60(b)(4) does not limit the District Court from a definite time limitation stipulated by rule 13.1.

See *Elliott v. Peirsol*, 26 U.S. 328 (1828):

"...but if [a court] act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a remedy sought in opposition to them, even prior to a reversal."

Rule 13.1 provides the pertinent part: "unless otherwise provided by law...". The law provides that statute of limitations, qualified immunity, res judicata do not form bar to a remedy sought in opposition to a void judgement and they cannot make a void judgment valid.

Enclosures

# United States Court of Appeals For the First Circuit

No. 19-2156

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SUSAN FERRAZ,

Plaintiff - Appellant,

v.

HOWARD SPEICHER, individually and in his official capacity as judge of Massachusetts Land Court,

Defendant - Appellee.

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Before

Howard, Chief Judge,  
Thompson and Barron, Circuit Judges.

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## JUDGMENT

Entered: July 29, 2020

Plaintiff Susan Ferraz appeals from the dismissal of her complaint against Massachusetts Land Court Judge Howard Speicher. After careful review of the record and the parties' submissions, we affirm the dismissal of plaintiff's claims based on absolute judicial immunity.

The judgment of the district court is affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Susan Ferraz

Nicholas Ashley Ogden

**Additional material  
from this filing is  
available in the  
Clerk's Office.**