

Awaiting red brief
Due 04/19/2021

Massachusetts Appeals Court
Defendant/Appellee
Red brief filed

Middlesex Superior Court
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Orlans Moran PLLC
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Santander Bank
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Leonard J. Sims
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Executive Office of Health and Human Services Dept.
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Unknown Future Property Owners
Defendant

Unknown Future Title Insurance Companies
Defendant

Companies Insuring the Classic Group, Inc
Defendant

Officers and Directors of the Classic Group, Inc
Defendant

The Classic Group, Inc
Defendant

Timothy Dismas Hartnett, A.A.G.
Abigail Fee, A.A.G.

Timothy Dismas Hartnett, A.A.G. - Withdrawn
Abigail Fee, A.A.G.

Effie L. Gikas, Esquire

Jeffrey Adams, Esquire
Matthew A. Kane, Esquire
Payal Salsburg, Esquire

Mark B. Lavoie, Esquire
Jason W. Canne, Esquire - Withdrawn

Timothy Dismas Hartnett, A.A.G. - Withdrawn
Abigail Fee, A.A.G.

DOCUMENTS

[Appellant Bostwick Brief](#)

[Appellee Massachusetts Appeals Court Brief](#)

[Appellant Bostwick Reply Brief](#)

DOCKET ENTRIES

Entry Date Paper Entry Text

02/02/2021 #1 Entered.

02/04/2021 Reported Question pursuant to the Appeals Court Memorandum and Order Pursuant to Rule 23.0: So much of the appeal from the judgment dated May 17, 2018, as concerns the Appeals Court is reported to the Supreme Judicial Court pursuant to G. L. c. 211A, s 12.

02/04/2021 #2 ORDER: The appellant's brief is due on or before March 16, 2021 and the appellee's brief is due on or before April 15, 2021. By the Court

02/16/2021 #3 LETTER from Attorney Matthew Lysiak.

03/19/2021 #4 SERVICE of appellant's brief for Richard D. Bostwick by Richard D. Bostwick, Pro Se Plaintiff/Appellant, Pro Se. (Note: 7 copies received.)

04/19/2021 #5 Appellee brief filed for Massachusetts Appeals Court by Abigail Fee, A.A.G..

04/20/2021 The clerk's office has received the brief filed by appellee, Massachusetts Appeals Court, through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary.

04/23/2021 #6 Additional 4 copies of the appellee's brief filed for the Massachusetts Appeals Court by AAG Abigail Fee.

04/29/2021 #7 MOTION to extend to 05/17/2021 filing of reply brief, to exceed the page limit (up to 45 pages) and to file 4 copies of reply brief, filed by Richard D. Bostwick, Pro Se Plaintiff/Appellant, Pro Se. (ALLOWED)

05/20/2021 #8 SERVICE of appellant's reply brief for Richard D. Bostwick by Richard D. Bostwick, Pro Se Plaintiff/Appellant, Pro Se.

09/22/2021 #9 NOTICE: This matter shall be submitted for the court's consideration on the papers filed by the parties on November 1, 2021. By the Court.

11/01/2021 Submitted on brief(s). (Gaziano, J., Lowy, J., Cypher, J., Wendlandt, J., Georges, Jr., J.).

11/23/2021 #10	RESCRIPT (Rescript Opinion): We affirm the order of the Superior Court judge dismissing all claims against the Appeals Court. (By the Court)
12/06/2021 #11	MOTION to Vacate the Appeals Court Rescript to Superior Court; and request for video filed for Richard D. Bostwick by Richard D. Bostwick, Pro Se Plaintiff/Appellant.
12/06/2021 #12	MOTION FOR RECONSIDERATION filed for Richard D. Bostwick by Richard D. Bostwick, Pro Se Plaintiff/Appellant. (1/21/2022). The motion is denied. However, the decision in this matter has been modified and a copy is attached. Please see the Revisions List of the Office of the Reporter of Decisions: https://www.mass.gov/service-details/opinion-revisions .
12/14/2021 #13	<p><u>ORDER:</u> The plaintiff, Richard D. Bostwick, has filed a motion for reconsideration of this court's opinion dated November 23, 2021, in which we affirmed a judgment of the Superior Court dismissing Bostwick's civil claims against the Appeals Court. He has also filed a motion asking us to vacate the Appeals Court's issuance of its rescript to the trial court in a related appeal, A.C. No. 2019-P-0589.[1] In addition he requests "reasonable accommodation" under the Federal Americans with Disabilities Act (ADA) on account of certain medical conditions.[2] We hereby order as follows.</p> <ol style="list-style-type: none"> 1. Bostwick's motion to vacate the Appeals Court's issuance of its rescript is denied as moot. As noted above, the Appeals Court has already recalled its rescript and stayed any re-issuance of the rescript until this court issues our rescript to the trial court in this case, which has yet to happen. 2. With respect to the motion for reconsideration of our opinion, in addition to his arguments on the merits, Bostwick requests "accommodation" in the form of being permitted to incorporate by reference "as evidence and argument" everything previously filed in the Appeals Court in A.C. No. 2019-P-0589 and in this court in FAR-28091 and SJC-13061. In support of this request he points to certain medical conditions from which he suffers and also alleges that when the Appeals Court issued its rescript in No. 2019-P-0589, he suffered "emotional distress" that "caused [him] problems in his effort to write" his motion for reconsideration in this court. As an alternative measure, Bostwick suggests that "[i]f this Court needs additional information," he should be permitted to re-write his motion for reconsideration with a three-week deadline and a page limit of thirty-five pages. <p>Without deciding whether the requested accommodation is required under the ADA, we will grant Bostwick additional time to supplement his motion for reconsideration; he shall file his supplement within three weeks of the date of this order. The supplement need not repeat arguments already made in the initial motion. Bostwick should focus on the "points of law or fact which it is contended the court has overlooked or misapprehended" in our opinion, as required by Mass. R. A. P. 27. This supplemental filing shall not exceed twenty pages in monospaced font or 4,000 words in proportional font as defined in Mass. R. A. P. 20 (a) (4), which is twice the length ordinarily allowed for reconsideration motions under rule 27. No extensions or enlargements should be anticipated.</p>
	It is SO ORDERED.
	<p>[1] This case has an unusual procedural posture. Bostwick brought claims in the Superior Court against multiple defendants, including the Appeals Court. The Superior Court ultimately dismissed all claims, and Bostwick appealed. Because Bostwick objected to the Appeals Court deciding the claims against itself, the Appeals Court reported to this court the part of the appeal concerning those claims, pursuant to G. L. c. 211A, § 12. The Appeals Court then decided the remainder of the appeal, i.e., the claims against the other defendants, on January 22, 2021, see <u>Bostwick v. 44 Chestnut Street, Wakefield, Mass.</u>, 99 Mass. App. Ct. 1107 (2021), and we denied Bostwick's application for further appellate review. Despite the fact that the Appeals Court had thus finally resolved all of the claims before it, it nevertheless ordered that the issuance of its rescript to the trial court as to those claims be stayed pending the decision from this court in the piece of the case that is before us.</p> <p>On receiving this court's opinion on November 23, 2021, the Appeals Court issued its rescript to the trial court. The rescript correctly addressed only those claims that had been decided by the Appeals Court. Bostwick filed a motion asking the Appeals Court to recall its rescript, apparently concerned that it would somehow impact his ability to seek reconsideration by us of our opinion in this case. The Appeals Court has since recalled its rescript and stayed its re-issuance pending our issuance of our rescript in this case.</p> <p>[2] Bostwick's motion to vacate the Appeals Court's rescript also demands that we provide him with a copy of the security video(s) from the Clerks' offices at the John Adams Courthouse capturing images of Bostwick at the time that he filed in person the two motions at issue here. This demand will be addressed in a separate order of the court to follow.</p>
01/04/2022 #14	Supplement to Motion for Reconsideration filed by Richard Bostwick.
01/13/2022 #15	Emergency Notice filed by Richard Bostwick.
01/21/2022 #16	ORDER: Regarding the plaintiff's request for security videos (No. 11), the requested footage has been preserved and will be maintained by the court. The plaintiff's request to have the footage docketed in this case is DENIED, as the plaintiff has failed to establish the relevance of or need for the footage on any of the issues raised by the appeal. The request for the footage was made in connection with a request for more time to file the motion for reconsideration, apparently in the belief that the video footage would substantiate the need for more time. The request for more time (and the full amount of additional time sought by the plaintiff) has already been granted. This order is without prejudice to the plaintiff submitting a future request for the footage and demonstrating a need for it. Any such request will be considered in due course in the context in which it is presented. (By the Court).
02/03/2022	RESCRIPT ISSUED to trial court.
02/11/2022 #17	Notice of Rescript (re. Appeals Court no. 2019-P-0589) received from Appeals Court.
02/16/2022 #18	Motion for reconsideration, for leave to file a further motion for reconsideration concerning modified decision, and to recall rescript filed for Richard D. Bostwick by Richard D. Bostwick, Pro Se Plaintiff/Appellant. ((3/24/22) The motion for reconsideration, and all additional requests for relief contained in it, are denied.)

EXHIBIT 5

ALERTS  Coronavirus Update 

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Opinion revisions

Corrections to published opinions will be noted below.

Opinions published in the electronic advance sheets of the Massachusetts Reports and Massachusetts Appeals Court Reports are subject to correction, amendment, and supplementation prior to publication in final form in the official bound volumes. Such revisions are noted in the lists below.

Revisions for Massachusetts Reports

Volume, Page	Case Name	Description of Revision	Date Revised
489, 266	Commonwealth v. Ng	Amendment - deletion of footnote 15 in first paragraph; resulting text shift and footnote text shift from p. 267 to p. 266.	4/1/2022
489, 267	Commonwealth v. Ng	Amendment - renumbering of original footnote 16 as footnote 15.	4/1/2022
489, 224	Commonwealth v. Santana	Amendment - addition of new footnote 12 at end of first paragraph; renumbering of original footnote 12 as footnote 13; resulting text shift and footnote text shift from p. 224 to p. 225.	3/25/2022
489, 190-191	City Council of Springfield v. Mayor of Springfield	Correction - replace "on the Attorney General's" in line 5 of footnote 6 with "in a collection of city and town ordinances or bylaws compiled by the Trial Court Law Libraries and available on the Commonwealth's official"; replace "have been provided to the Attorney General" in footnote 6 with "are available on the Commonwealth's official website"; resulting text shift from p. 191 to p. 194.	3/4/2022
488, 1016	Bostwick v. 44 Chestnut Street, Wakefield, Mass.	Amendment - delete catchword, Judicial Immunity.	1/21/2022

488, 1017	Bostwick v. 44 Chestnut Street, Wakefield, Mass.	Amendment - delete text in fourth full paragraph beginning with "In applying this principle" in line 5 through end of line 23; resulting in text shift from p. 1018 to 1017.	1/21/2022
488, 1018	Bostwick v. 44 Chestnut Street, Wakefield, Mass.	Amendment - delete lines 1 and 2; delete entire first full paragraph including footnote 4; in second full paragraph, delete text after "the plaintiff," in line 1 and up to "the Superior Court judge" in line 11; replace "these allegations" with "the complaint" in line 12, and add new footnote 4 at end of this paragraph; resulting in text shift from p. 1019 to p. 1018.	1/21/2022
488, 1015	Lieber v. President and Fellows of Harvard College	Amendment - insert "(No. 1)" after "another" in case caption in line 2.	1/21/2022
488, 741	Commonwealth v. Sweeting-Bailey	Amendment - sentence inserted at end of footnote 1.	1/7/2022
488, 742	Commonwealth v. Sweeting-Bailey	Correction - defendant's name deleted in first sentence.	1/7/2022
488, 747	Commonwealth v. Sweeting-Bailey	Amendment - in footnote 7, replace "in his brief and Justice Gaziano in his dissent make" with "makes" in first sentence and delete "See post at 771-776." after first sentence.	1/7/2022
488, 749	Commonwealth v. Sweeting-Bailey	Correction - replace "the defendant's" with "Paris's" in line 5 of footnote 8.	1/7/2022
488, 597	Commonwealth v. Jacobs	Correction - replace "eighteen" with "seventeen" in line 3 of first paragraph.	11/12/2021
488, 149	Matter of P.R.	Correction - replace Conclusion sentence with "The order of commitment must be vacated and set aside. The case is remanded to the Boston Municipal Court for entry of an order consistent with this opinion."	10/22/2021
488, 422	Commonwealth v. Rintala	Amendment - insert "(Melissa Ramos also present)" in counsel listing.	10/22/2021

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from the denial of that petition.^{3,4}

Appeal dismissed.

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

David R. Suny & Andrea L. Davulis for the petitioner.

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET, WAKEFIELD, MASS., & others.¹ November 23, 2021. Appeals Court. Civil Rights, Availability of remedy. Americans with Disabilities Act. Immunity from Suit. Practice, Civil, Motion to dismiss.

The plaintiff, Richard D. Bostwick, brought this civil action in the Superior Court in 2015 against multiple defendants, including the Appeals Court, alleging various claims relating to property situated at 44 Chestnut Street in Wakefield. Three judges in the Superior Court dismissed the claims against all defendants through rulings on a series of motions, and the plaintiff appealed to the Appeals Court.² The plaintiff objected to the Appeals Court deciding the claims against it, and in service of “the efficient administration of justice,” the Appeals Court reported to this court “that part of the appeal concerning the claims against the Appeals Court” pursuant to G. L. c. 211A, § 12. See *Bostwick*

³Even if those issues were not already before us on direct review, Lieber would not have been entitled to extraordinary relief pursuant to G. L. c. 211, § 3, because, as the single justice correctly noted, he has or had adequate alternative remedies. With respect to the denial of his request for a preliminary injunction, he had the right as a matter of law to appeal to the Appeals Court pursuant to G. L. c. 231, § 118, second par., the very relief that he pursued and that has led to his pending appeal in this court. With respect to the interlocutory ruling on the cross motions for judgment on the pleadings, he could have petitioned a single justice of the Appeals Court pursuant to G. L. c. 231, § 118, first par., see *Greco v. Plymouth Sav. Bank*, 423 Mass. 1019, 1019-1020 (1996) (“Review under G. L. c. 211, § 3, does not lie where review under c. 231, § 118, would suffice”), and in any event, he can appeal as a matter of right from the final judgment if it is adverse to him.

⁴The G. L. c. 231, § 118, second par., appeal has been argued and is currently under advisement.

¹Unknown future property owners of 44 Chestnut Street, Wakefield, Mass.; unknown future title insurance companies providing title insurance for 44 Chestnut Street; Santander Bank, N.A. (Santander); Federal National Mortgage Association (Fannie Mae); Orlans Moran PLLC; Leonard J. Sims, Leonard J. Sims Co., General Contractors, and Leonard J. Sims Custom Carpentry; The Classic Group, Inc., previously known as Class Restorations, Inc.; Kyle Barnard; Philip Bates; Richard F. Gant; unknown officers and directors of The Classic Group, Inc.; unknown insurance policy entities/companies insuring The Classic Group, Inc., and their officers and directors; Massachusetts Department of Public Health; Paul N. Hunter, individually and as director of the Childhood Lead Poisoning Prevention Program in the Massachusetts Department of Public Health; Donna Levin; Warren M. Laskey; Massachusetts Appeals Court; and Middlesex Superior Court.

²A more detailed summary of the procedural history of the case and the nature of plaintiff's claims against each of the defendants is contained in the Appeals Court's decision. See *Bostwick v. 44 Chestnut Street, Wakefield, Mass.*, 99 Mass. App. Ct. 1107 (2021).

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v. 44 Chestnut Street, Wakefield, Mass., 99 Mass. App. Ct. 1107 (2021).³ For the reasons discussed *infra*, we affirm the judgment of the Superior Court judge dismissing the claims against the Appeals Court.

“We review the allowance of a motion to dismiss *de novo*” (citation omitted). *Barbuto v. Advantage Sales & Mktg., LLC*, 477 Mass. 456, 457 (2017). “In deciding whether a count in the complaint states a claim under Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), we accept as true the allegations in the complaint, draw every reasonable inference in favor of the plaintiff, and determine whether the factual allegations plausibly suggest an entitlement to relief under the law.” *Id.* at 457-458.

The relevant pleading in this case is the plaintiff’s first amended complaint, filed on December 2, 2015. The claims against the Appeals Court fall into two basic categories: (1) claimed violations of various Federal rights pursuant to 42 U.S.C. § 1983; and (2) claimed violations of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 et seq. For both categories of claims, the plaintiff seeks monetary damages.

The plaintiff’s § 1983 claims require little discussion. The Superior Court properly dismissed these claims because the Appeals Court is not a “person” amenable to suit under that statute. See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989). Moreover, sovereign immunity bars suits for damages against a State or its agencies under § 1983. *Id.* at 67; *Lopes v. Commonwealth*, 442 Mass. 170, 178 (2004).

The plaintiff’s ADA claims against the Appeals Court also fail, but for different reasons. Under the ADA, a State court, such as the Appeals Court, may be held liable for violating a duty to accommodate a person with a disability in cases “implicating the fundamental right of access to the courts.” *Tennessee v. Lane*, 541 U.S. 509, 533-534 (2004).

Viewing the allegations in the light most favorable to the plaintiff, the Superior Court judge correctly concluded that the complaint did not suggest a plausible claim for relief under the ADA.⁴

To state a claim under Title II of the ADA, a plaintiff must allege “(1) that he [or she] is a qualified individual with a disability; (2) that he [or she] was either excluded from participation in or denied the benefits of some public entity’s

³In its decision as to the remaining defendants, the Appeals Court remanded claims against two defendants (Santander and Fannie Mae) to the Superior Court for further proceedings, and it otherwise affirmed the dismissals. See *Bostwick*, 99 Mass. App. Ct. 1107.

⁴The actions complained of include (1) the Appeals Court’s dismissal of an appeal by the plaintiff for lack of prosecution, along with a single justice’s decision not to vacate the dismissal, see *Bostwick vs. Sims*, Appeals Court, No. 2014-P-1277; (2) the Appeals Court’s decision affirming a Superior Court judgment dismissing a civil action brought by the plaintiff, see *Bostwick v. Sovereign Bank*, 85 Mass. App. Ct. 1101 (2014); (3) the alleged statement of an Appeals Court clerk, in response to Bostwick’s concern that his filing of an appeal in that court would violate the automatic stay imposed by Federal bankruptcy law, that “the [a]ppellate [c]lock under Rule 4 has started and there is no way to [s]top [i]t”; and (4) an occasion on which the Appeals Court “refused to take any papers” from him in connection with an appeal.

Among its other arguments, the Appeals Court contends that, to the extent Bostwick’s claims under the ADA are based on judicial conduct, they are barred by the doctrine of absolute judicial immunity. Because resolution of this issue is not necessary to our disposition of this case, we leave that issue for another day.

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services, programs, or activities or was otherwise discriminated against; and (3) that such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." *Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 5 (1st Cir. 2000). Here, the complaint is devoid of factual allegations to support a conclusion that the actions of which the plaintiff complains constituted discrimination by or exclusion from access to the Appeals Court *on the basis of a disability*.⁵

In sum, we affirm the order of the Superior Court judge dismissing all claims against the Appeals Court.

So ordered.

The case was submitted on briefs.

Richard D. Bostwick, pro se.

Maura Healey, Attorney General, & *Abigail Fee*, Assistant Attorney General, for the Appeals Court.

JOSÉ L. NEGRÓN *vs.* THOMAS A. TURCO. December 9, 2021. *Supreme Judicial Court*, Superintendence of inferior courts.

The petitioner, José L. Negrón, appeals from a judgment of a single justice of this court denying his petition for relief pursuant to G. L. c. 211, § 3.¹ We affirm.

Negrón sought interlocutory relief from "undue delays" and "unreasonable decision[s]" by judges in two civil cases pending in the Superior Court in which he is a plaintiff. In his two-page petition filed in the county court, Negrón also requested that action on his petition be postponed due to circumstances related to the COVID-19 pandemic. A single justice of this court denied the petition without a hearing and without reference to Negrón's request for postponement. Following the entry of judgment, Negrón filed a "motion for leave to proceed with interlocutory appeal" in the county court, along with an affidavit in support and multiple exhibits, which the county court apparently treated as notice of appeal from the judgment of the single justice.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner seeking relief from an interlocutory ruling of the trial court to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." Negrón has failed to meet that burden here.

In his memorandum before this court, Negrón offers additional argument regarding his claims that the interlocutory rulings in his civil cases have been unreasonable and deprived him of substantial rights, with particular emphasis on

⁵In portions of the complaint, the plaintiff suggests that "discrimination" can be implied merely because the plaintiff is pro se and indigent, and because he is litigating against State agencies and large institutional defendants. We reject this blanket contention. To the extent that there are other claims against the Appeals Court that we have not addressed, we have not overlooked them; rather, they also fail to plausibly suggest a claim for relief, and we decline to discuss them.

¹The pleading filed in the county court was entitled "Interlocutory Appeal et al. Civil Rights Effected." The single justice treated the filing as a petition pursuant to G. L. c. 211, § 3.