

APPENDIX A

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-13061

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. Judicial Immunity. 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

¹ Unknown 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., previous known as Class Restorations, Inc.; Kyle Barnard; Philip Bates; Richard F. Gantt; 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.

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 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

² A 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).

³ In 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 otherwise affirmed the dismissals. See Bostwick, 99 Mass. App. Ct. 1107.

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). In applying this principle, courts have drawn a distinction between a court's administrative functions, which may form the basis for liability under the ADA, and judicial conduct, which enjoys absolute immunity from suit. See Geness v. Administrative Office of Pa. Courts, 974 F.3d 263, 274 n.12 (3d Cir. 2020), cert. denied, 141 S. Ct. 2670 (2021) ("The parties do not present and we are not aware of any legal authority that would permit [the defendant] to be found liable [under the ADA] based on judicial conduct"); Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001) (ADA claims against judge barred by judicial immunity where allegations concerned judicial acts, rather than administrative or other functions). See generally LaLonde v. Eissner, 405 Mass. 207, 210 (1989) ("It is a well-settled principle under our common law, too well settled to require discussion, that every judge, whether of a higher or lower court, is exempt from liability to an action for any judgment or decision rendered in the exercise of jurisdiction vested in him [or her] by law" [citation and quotation omitted]). Moreover, the plaintiff cannot avoid the absolute immunity afforded to judicial conduct by naming the Appeals Court as a defendant, rather than an individual judge or judges. See Geness, 974 F.3d at 274 n.12; DiPasquale v. Miln, 303 F. Supp. 2d 430, 431-432 (S.D.N.Y. 2004) (adding housing court as named defendant did not "alter the result" that ADA claims based on judicial conduct were barred by absolute judicial immunity).

Here, the plaintiff's ADA claims against the Appeals Court were based in large part on quintessential judicial conduct, for instance, the court's dismissal of an appeal by the plaintiff for lack of prosecution, along with a single justice's refusal to vacate the dismissal, see Bostwick vs. Sims, Appeals Court, No. 2014-P-1277, and in another case, the issuance of a decision affirming a Superior Court judgment dismissing a civil suit brought by the plaintiff, see Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014). For the reasons discussed supra, claims under the ADA based on judicial conduct are barred by

absolute judicial immunity, and therefore, the Superior Court judge's dismissal of any such claims was proper.⁴

Viewing the allegations in the light most favorable to the plaintiff, and excluding allegations indisputably based on judicial conduct, there remain some allegations of conduct by Appeals Court personnel that we must address. For instance, the plaintiff alleges that on two occasions, he went to the Appeals Court clerk's office and expressed concern that if he filed an appeal in a case against a defendant who had filed for bankruptcy he would be in violation of the "automatic stay" imposed by Federal bankruptcy law. According to the plaintiff, the Appeals Court clerks "stated that the [a]ppellate [c]lock under Rule 4 has started and there is no way to [s]top [i]t." On another occasion, the plaintiff alleges that the Appeals Court "refused to take any papers" from him in connection with an appeal. Even taking these allegations as true, the Superior Court judge correctly concluded that these allegations did not suggest a plausible claim for relief under the ADA.

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 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

⁴ The Superior Court judge did not base his dismissal of these claims on the ground of judicial immunity, but we may affirm on any basis apparent in the record. See, e.g., Lopes v. Commonwealth, 442 Mass. 170, 181 (2004); Gabbidon v. King, 414 Mass. 685, 686 (1993), and cases cited.

⁵ In 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.

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.

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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, 600-601	Commonwealth v. Rossetti	Amendment - in line 6 on p. 600, before sentence beginning "Our sentencing statutes" insert the following sentence: General Laws c. 276, § 87, provides that, with some exceptions, probation is available "in any case after a finding or verdict of guilty."; resulting text shift from p. 600 to p. 601.	6/17/2022
489, 671-672	VAS Holdings & Investments LLC v. Commissioner of Revenue	Amendment - in footnote 2, line 5, replace text after "hundred" with "shareholders. Individuals may be shareholders, as may most nonprofit entities; moreover, a parent S corporation that holds one hundred percent of the small business corporation's stock and makes an election to treat the small business corporation as a qualified subchapter S subsidiary may also be a shareholder."; resulting text shift from p. 671 to p. 672.	5/27/2022
489, 658	Commonwealth v. Duke	Correction - replace "most" with "must" in line 2 of last paragraph.	5/20/2022
489, 660	Commonwealth v. Duke	Correction - replace "wanton and reckless" with "wanton or reckless" in last sentence of first full paragraph.	5/20/2022
489, 79	In the Matter of Expungement	Amendment - in footnote 5, in line 1 delete "also"; in line 2 delete remaining text in sentence after "Legislature" and replace	4/29/2022

with "altered the threshold eligibility language in G. L. c. 276, § 100G (a)".

489, 79-80	In the Matter of Expungement	Amendment - in footnote 5, in lines 3 and 4 delete text after "modified" and before "more" and replace with "that subsection to exclude otherwise eligible petitioners with"; in lines 6 and 7 delete remaining text in sentence after "amendment," and replace with "that subsection provided simply that "[a] petitioner who has a record of conviction" could seek time-based expungement".	4/29/2022
489, 512	Baxter v. Commonwealth	Amendment - in Conclusion, in line 6 replace "Accordingly" with "Therefore"; in line 7 replace "reversed" with "vacated and set aside".	4/29/2022
489, 512-513	Baxter v. Commonwealth	Amendment - in last sentence of Conclusion delete text after "remanded" and before "on" and replace with "for entry of a judgment of not guilty on the indictment charging murder, and for such further proceedings as are necessary".	4/29/2022
489, 355	Commonwealth v. Daveiga	Amendment - delete text after "Court" in final line.	4/15/2022
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,	Bostwick v. 44	Amendment - delete text in fourth full paragraph beginning	1/21/2022

1017	Chestnut Street, Wakefield, Mass.	with "In applying this principle" in line 5 through end of line 23; resulting text shift from p. 1018 to 1017.	
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 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
487, 410 & 420	Rosenberg v. JPMorgan	Correction - replace "actions" with "action" in last sentence of footnote 14 on page 410, and in last sentence of block	5/21/2021

Rescript Opinions.

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).

Rescript Opinions

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.

Rescript Opinions

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.

APPENDIX B



Richard Bostwick <[REDACTED]@gmail.com>

*RDB***SJC-13061 - Notice of Docket Entry**

2 messages

SJC Full Court Clerk <SJCCommClerk@sjc.state.ma.us>

Fri, Jan 21, 2022 at 6:00 PM

To: [REDACTED]@gmail.com

RDB

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. SJC-13061

RICHARD D. BOSTWICK

vs.

44 CHESTNUT STREET, WAKEFIELD, MASS., & others

NOTICE OF DOCKET ENTRY

Please take note that the following entry was made on the docket of the above-referenced case:

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).

Francis V. Kenneally Clerk

Dated: January 21, 2022

To:

Richard D. Bostwick
Jeffrey J. Cymrot, Esquire
Jeffrey Adams, Esquire
Matthew A. Kane, Esquire
Payal Salsburg, Esquire
Alex F. Mattera, Esquire
Abigail Fee, A.A.G.
Effie L. Gikas, Esquire
Mark B. Lavoie, Esquire

SJC Full Court Clerk <SJCCommClerk@sjc.state.ma.us>

Fri, Jan 21, 2022 at 6:00 PM

To: [REDACTED]@gmail.com

RDB

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. SJC-13061

RICHARD D. BOSTWICK

vs.

44 CHESTNUT STREET, WAKEFIELD, MASS., & others

NOTICE OF DOCKET ENTRY

Please take note that the following entry was made on the docket of the above-referenced case:

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>.
[Quoted text hidden]

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SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET, WAKEFIELD, MASS.,
& others
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
SJC-13061

CASE HEADER

Case Status	Decided, Rescript issued	Status Date	02/03/2022
Nature	Real property dispute	Entry Date	02/02/2021
Appellant	Plaintiff	Case Type	Civil
Brief Status	Awaiting red brief	Brief Due	04/19/2021
Quorum	Gaziano, Lowy, Cypher, Wendlandt, Georges, Jr., JJ.		
Argued Date	11/01/2021	Decision Date	11/23/2021
AC/SJ Number	<u>2019-P-0589</u>	Citation	488 Mass. 1016
DAR/FAR Number		Lower Ct Number	1581CV05636
Lower Court	Middlesex Superior Court	Lower Ct Judge	Kenneth V. Desmond, Jr., J.
Route to SJC	Direct Entry: Certified/Reported from App. Ct. (c. 211A, s. 10B/12)		

INVOLVED PARTY

Richard D. Bostwick
Pro Se Plaintiff/Appellant
Blue brief filed

44 Chestnut Street
Defendant

Kyle Barnard
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Philip Bates
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Federal National Mortgage Association
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Richard Gantt
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Paul N. Hunter
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Paul N. Hunter
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Warren M. Laskey
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

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

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

Donna Levin
Defendant/Appellee

ATTORNEY APPEARANCE

Jeffrey J. Cymrot, Esquire

Jeffrey J. Cymrot, Esquire

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

Alex F. Mattera, Esquire

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

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

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

Mark B. Lavoie, Esquire

Mark B. Lavoie, Esquire

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

Awaiting red brief
Due 04/19/2021

Massachusetts Appeals Court
Defendant/Appellee
Red brief filed

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

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

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

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

Effie L. Gikas, Esquire

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

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

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

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

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

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

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

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>ORDER: 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> <p>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.</p> <p>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> <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>
	<p>It is SO ORDERED.</p> <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 <i>Bostwick v. 44 Chestnut Street, Wakefield, Mass.</i>, 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.)

As of 04/25/2022 3:20pm

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106

Dated: January 22, 2021

Richard D. Bostwick, Pro Se
44 Chestnut St
PO Box 1959
Wakefield, MA 01880

RE: No. 2019-P-0589
Lower Court No: 1581CV05636

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET & others

NOTICE OF DECISION

Please take note that on January 22, 2021, the Appeals Court issued the following decision in the above-referenced case:

Decision: Rule 23.0. So much of the judgment dated September 27, 2016, dismissing Bostwick's claims against Santander and Fannie Mae, to the extent they challenge the foreclosure on 44 Chestnut Street, is vacated. 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, § 12. The judgment dated July 11, 2017, as to the unknown defendants is amended to include dismissal of all claims against 44 Chestnut Street, Wakefield, Mass.; as so amended, the judgment is affirmed. The remaining judgments are also affirmed, and the matter is remanded for further proceedings consistent with the memorandum and order of the Appeals Court. (Green, C.J., Sullivan, Shin, JJ.).

*Notice.

Starting at 11:00 AM on the date of this notice, a copy of the court's decisions in this case will be available at:

<https://www.mass.gov/service-details/new-opinions>

You can type or copy and paste the above address to view or download the decision. Decisions are posted on the court's website for two weeks. A copy of all decisions older than two weeks will be available on
<http://www.lexisnexis.com/clients/macourts/>

The clerk's office will not mail a paper copy of the decision to you. Only incarcerated self-represented litigants will receive a paper copy by mail. Any questions regarding retrieval of decisions should be directed to the Office of the Reporter of Decisions at 617-557-1030.

Any further filings in this appeal by attorneys must be filed by using the electronic filing system. For access go to
<http://www.efilema.com/>

Very truly yours,
Joseph F. Stanton, Clerk

To: Richard D. Bostwick, Jeffrey J. Cymrot, Esquire, Jeffrey Adams, Esquire, Matthew A. Kane, Esquire, Payal Salsburg, Esquire, Alex F. Mattera, Esquire, Timothy Dismas Hartnett, A.A.G., Abigail Fee, A.A.G., Effie L. Gikas, Esquire, Mark B. Lavoie, Esquire.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 19-P-589

RICHARD D. BOSTWICK

vs.

44 CHESTNUT STREET, WAKEFIELD, MASS., & others.

Pending in the Superior

Court for the County of Middlesex

Ordered, that the following entry be made on the docket:

So much of the judgment dated September 27, 2016, dismissing Bostwick's claims against Santander and Fannie Mae, to the extent they challenge the foreclosure on 44 Chestnut Street, is vacated. 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, § 12. The judgment dated July 11, 2017, as to the unknown defendants is amended to include dismissal of all claims against 44 Chestnut Street, Wakefield, Mass.; as so amended, the judgment is affirmed. The remaining judgments are also affirmed, and the matter is remanded for further proceedings consistent with the memorandum and order of the Appeals Court.

By the Court,

Joseph F. Stanton, Clerk
Date January 22, 2021.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-589

RICHARD D. BOSTWICK

vs.

44 CHESTNUT STREET, WAKEFIELD, MASS., & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Richard D. Bostwick filed a pro se complaint² against multiple defendants, raising claims that all relate in some way to his residence at 44 Chestnut Street in Wakefield. A Superior Court judge (first judge) allowed motions to dismiss filed by

¹ Unknown 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.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims, Leonard J. Sims Co., General Contractors, and Leonard J. Sims Custom Carpentry; unknown The Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Gantt; 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 in his official capacity 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.

² We refer to the first amended complaint, filed on December 2, 2015.

four sets of defendants: (1) Santander Bank, N.A. (Santander), and Federal National Mortgage Association (Fannie Mae); (2) Massachusetts Department of Public Health, Paul N. Hunter, Donna Levin, Warren M. Laskey, Massachusetts Appeals Court, and Middlesex Superior Court (together, Commonwealth defendants); (3) Kyle Barnard and Philip Bates; and (4) Orlans Moran, PLLC (Orlans). The first judge also allowed a motion for summary judgment filed by Leonard J. Sims, Leonard J. Sims Co., General Contractors, and Leonard J. Sims Custom Carpentry (together, Sims defendants). A judgment of dismissal later entered as to the unknown defendants for failure of service of process under Superior Court Standing Order 1-88, and a second judge denied Bostwick's motion to vacate the dismissal. A third judge then allowed a motion to dismiss filed by Richard F. Gantt, relying on the reasons set forth in the first judge's memorandum of decision dismissing the claims against Barnard and Bates.

Bostwick appeals from the judgments of dismissal.³ He also appeals from an order of a single justice of this court denying

³ A separate and final judgment entered as to Santander, Fannie Mae, and Orlans in September 2016, and as to the Sims defendants in October 2016. Bostwick timely appealed from those judgments, but in April 2017 a single justice of this court vacated the appeals, stating that they "may be re-entered upon the conclusion of all proceedings in the Middlesex Superior Court." In July 2017 judgment entered as to the unknown defendants, and in May 2018 judgment entered as to the Commonwealth defendants, Barnard and Bates, and Gantt. Within ten days of the entry of the May 2018 judgment, Bostwick served a motion for relief from

his request for leave to file a ninety-five page reply brief. We conclude that Bostwick's claims against Santander and Fannie Mae should not have been dismissed to the extent they challenge the foreclosure on 44 Chestnut Street; we therefore vacate that portion of the applicable judgment and remand for further proceedings. In addition, we report that part of the appeal concerning the claims against the Appeals Court to the Supreme Judicial Court pursuant to G. L. c. 211A, § 12. Otherwise, we affirm.

Single justice order. After the single justice denied Bostwick's motion for leave to file a ninety-five page reply brief, Bostwick filed a second motion for leave on November 23, 2020, which was referred to this panel and which seeks permission to file a 179-page reply brief as an accommodation under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. (ADA). We allow the November 23, 2020, motion and accept the 179-page reply brief for filing. As a result, Bostwick's appeal from the single justice's order is moot.

Judgments of dismissal. 1. Standard of review. We review the allowance of a motion to dismiss *de novo*, "accept[ing] as

the judgment. That motion was denied on July 17, 2018, and Bostwick filed a timely notice of appeal on August 14, 2018. We deem Bostwick's August 14, 2018, notice of appeal to revive the earlier notices of appeal, consistent with the order of the single justice.

true the facts alleged in the plaintiff['s] complaint as well as any favorable inferences that reasonably can be drawn from them." Galiastro v. Mortgage Elec. Registration Sys., Inc., 467 Mass. 160, 164 (2014). "What is required at the pleading stage are factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007).

Our review of the allowance of a motion for summary judgment is also de novo. See Pinti v. Emigrant Mtge. Co., 472 Mass. 226, 231 (2015). We must "determine 'whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law.'" Id., quoting Juliano v. Simpson, 461 Mass. 527, 529-530 (2012).

2. Santander and Fannie Mae. Santander and Fannie Mae contend that all of the claims and issues raised in the complaint -- including the question of Santander's authority to foreclose on 44 Chestnut Street -- are barred by res judicata.⁴ Their argument is based on a 2009 Superior Court action that

⁴ While the claims are nominally brought under the ADA and 42 U.S.C. § 1983, we construe the complaint, as the first judge did, to include a claim that Santander lacked the authority to foreclose on 44 Chestnut Street. See Abate v. Fremont Inv. & Loan, 470 Mass. 821, 835 (2015). This is consistent with how Santander and Fannie Mae have briefed their arguments on appeal.

Bostwick filed against Santander (then known as Sovereign Bank) and Fannie Mae, in which he asserted, among other things, that Santander conducted a "wrongful foreclosure" on 44 Chestnut Street. Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014). The judge in that case dismissed Bostwick's "wrongful foreclosure" claim on the ground that "there ha[d] been no foreclosure," and we affirmed the dismissal on appeal. Id.

Given the disposition of the 2009 action, we conclude that res judicata does not preclude Bostwick from challenging Santander's authority to foreclose. "The term 'res judicata' includes both claim preclusion and issue preclusion." Kobrin v. Board of Registration in Med., 444 Mass. 837, 843 (2005). Santander and Fannie Mae appear to rely on claim preclusion, which has three elements: "(1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits." Id., quoting DaLuz v. Department of Correction, 434 Mass. 40, 45 (2001). The third element is not met here because Bostwick's claim was not adjudicated on the merits in the 2009 action; it was dismissed as not ripe, i.e., for want of an actual controversy. This type of dismissal is not an adjudication on the merits giving rise to claim preclusion. See Bevilacqua v. Rodriguez, 460 Mass. 762, 780 (2011) ("dismiss[al] for lack of jurisdiction is not an adjudication on the merits," and it is

"inappropriate to attach preclusive effects to the dismissal beyond the matter actually decided -- the absence of subject matter jurisdiction"); Department of Revenue v. Ryan R., 62 Mass. App. Ct. 380, 383 (2004), citing Restatement (Second) of Judgments § 26 comment c (1982) ("where formal barriers, such as limitations on subject matter jurisdiction, existed in first action, plaintiff is not barred from bringing those claims in subsequent action").⁵

Issue preclusion is also inapplicable because the parties did not actually litigate in the 2009 action whether Santander had the authority to foreclose. See Kobrin, 444 Mass. at 844 ("Issue preclusion can be used only to prevent relitigation of issues actually litigated in the prior action").⁶ We also reject the argument, to the extent made, that Bostwick is precluded from relitigating the question of ripeness itself. While no

⁵ In arguing otherwise, Santander and Fannie Mae point out that the judge in the 2009 action dismissed Bostwick's claim on summary judgment. But the case they cite, Wright Mach. Corp. v. Seaman-Andwall Corp., 364 Mass. 683 (1974), does not stand for the proposition that a summary judgment automatically operates as an adjudication on the merits. To the contrary, the court there acknowledged that, depending on the "characteristics of the type of summary judgment" entered, it may or may not "constitute a determination on the merits of a claim and a bar to subsequent proceedings involving the same parties and the same claim." Id. at 692.

⁶ To the extent the complaint alleges that Santander had the obligation to remediate lead contamination and to offer Bostwick a loan modification, these issues were actually litigated in the 2009 action and cannot be relitigated. See Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014).

foreclosure had occurred when Bostwick initiated this action in 2015,⁷ that did not necessarily render his claim premature; he might still have had remedies, including a declaratory judgment, if he could demonstrate the existence of an actual controversy.

See Abate v. Fremont Inv. & Loan, 470 Mass. 821, 835 (2015).

Whether an actual controversy existed in 2015 is not the same question that was litigated years earlier in the 2009 action and is therefore not barred by issue preclusion. See School Comm. of Cambridge v. Superintendent of Schs. of Cambridge, 320 Mass. 516, 518 (1946) (for there to be actual controversy, "the circumstances attending the dispute [must] plainly indicate that unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation").

Santander and Fannie Mae did not move to dismiss for want of an actual controversy, and there is no question that one now exists. This is because on April 29, 2016, just days after the first judge allowed Santander's and Fannie Mae's motion to dismiss on res judicata grounds, Orlans conducted a foreclosure sale on behalf of Santander. Thus, because there is an actual controversy, and because Bostwick's challenge to the foreclosure

⁷ In August 2015 Santander filed a complaint pursuant to the Servicemembers Civil Relief Act in the Land Court. Bostwick filed this action the following month.

should not have been dismissed as barred by res judicata, the case must be remanded for further proceedings.

We emphasize that the scope of the remand is limited to claims concerning the foreclosure. As best we can discern, Bostwick's claims under 42 U.S.C. § 1983 and the ADA are based on events that occurred during litigation of the 2009 action. We agree with Santander and Fannie Mae that these claims were correctly dismissed. The complaint contains no allegations plausibly suggesting that either Santander or Fannie Mae acted "under color of state law," as is required to state a claim under 42 U.S.C. § 1983. See Appleton v. Hudson, 397 Mass. 812, 818 (1986). Similarly, the complaint does not plausibly allege that either defendant qualifies as a "public entity" under the ADA, see 42 U.S.C. §§ 12131-12132, nor does it suggest how either defendant's actions during the 2009 litigation otherwise implicated the ADA.

3. Orlans. The complaint's sole factual allegation against Orlans is that Santander, "through Orlans," issued "a Land Court, Order of Notice against Bostwick's [p]roperty." This is insufficient to establish a plausible right to relief, and so all claims against Orlans were correctly dismissed. See Iannacchino, 451 Mass. at 636.

4. Sims defendants. The claims against the Sims defendants were correctly dismissed as barred by claim

preclusion. All of these claims appear to relate to deleading work that the Sims defendants performed at 44 Chestnut Street in 2001 and 2002. But the same deleading work was the subject of a previous complaint that Bostwick filed against the Sims defendants in 2004. After years of litigation and a seven-day jury trial, that action resulted in a judgment in the Sims defendants' favor. Although Bostwick appealed from the judgment, the appeal was dismissed by this court for lack of prosecution.

Bostwick's current complaint, even construed liberally, raises no claims that survive the application of claim preclusion. The claims involve the same parties and derive from the same transaction (the deleading work) as those in the 2004 action, which resulted in a final judgment on the merits. As the requirements for preclusion have been met, see Kobrin, 444 Mass. at 843, all claims against the Sims defendants were correctly dismissed.

5. Barnard, Bates, and Gantt. The complaint raises numerous claims against Barnard, Bates, and Gantt, as officers or directors of the Classic Group, Inc. (Classic). As best we can discern, some of the claims assert violations of the automatic-stay provision of the Bankruptcy Code, 11 U.S.C. § 362, arising out of Classic's bankruptcy filing in 2011. Other claims appear to be based on deleading work that Classic

performed at 44 Chestnut Street in 2001 and 2002; the complaint alleges in particular that Classic did not have the required licenses or permits to perform that work.

The claims based on Classic's bankruptcy filing were correctly dismissed because they are barred by issue preclusion. "The preclusive effect of a Federal court judgment is governed by Federal common law." Alicea v. Commonwealth, 466 Mass. 228, 234 (2013). Under Federal common law, issue preclusion bars "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, whether or not the issue arises on the same or a different claim." New Hampshire v. Maine, 532 U.S. 742, 748-749 (2001). Here, Bostwick commenced an adversary proceeding in 2012 in the United States Bankruptcy Court for the District of Massachusetts (bankruptcy court), naming Classic, Barnard, Bates, and Gantt as defendants, among others. Bostwick claimed that the defendants violated the automatic stay, but the bankruptcy court judge concluded that Bostwick "lack[ed] standing to pursue causes of action for violation of the automatic stay . . . [is] vested in the Chapter 7 trustee." The bankruptcy court judge's decision was affirmed, first by a judge of the United States District Court for the District of Massachusetts, and then by the United States Court of Appeals

for the First Circuit. Bostwick is thus precluded from relitigating the issue of whether he has standing to enforce the automatic stay. See Underwriters Nat'l Assur. Co. v. North Carolina Life & Acc. & Health Ins. Guar. Ass'n, 455 U.S. 691, 706 (1982) (issue preclusion applies to threshold jurisdictional issues). Accord National Ass'n of Home Builders v. Environmental Protection Agency, 786 F.3d 34, 41 (D.C. Cir. 2015).

The respective limitations periods bar Bostwick's claims for misrepresentation, fraud, breach of contract, breach of warranties, unjust enrichment, negligence, and negligent infliction of emotional distress, as well as his claims under G. L. c. 93A and the Massachusetts home improvement contractor law, G. L. c. 142A. The longest of these limitations periods is the six-year period that governs certain actions in contract. See G. L. c. 260, § 2.⁸ According to the complaint, Bostwick learned in November 2007 that Classic did not have the required licenses or permits for the deleading work it performed, and Bostwick sent Classic a G. L. c. 93A demand letter a month later. The limitations periods therefore began running in November 2007 at the latest. Because Bostwick did not file his

⁸ See G. L. c. 260, § 2A (three-year statute of limitations for actions in tort); G. L. c. 260, § 5A (four-year statute of limitations for "[a]ctions arising on account of violations of any law intended for the protection of consumers").

complaint until September 2015, almost eight years later, these claims were correctly dismissed as time-barred.

The remaining claims assert violations of the Massachusetts lead poisoning prevention laws, 42 U.S.C. § 1983, and the ADA. Even assuming these claims were timely, they were correctly dismissed for failure to establish a plausible entitlement to relief. See Iannacchino, 451 Mass. at 636. Bostwick has no viable claim for damages or contribution arising out of any violation of the lead poisoning prevention laws, given the complaint's assertion that "[no] children were ever living or visiting or harmed at Bostwick's [p]roperty." See G. L. c. 111, § 199 (a) ("the owner of any premises shall be liable for all damages to a child under six years of age at the time of poisoning"). The complaint also fails to state a claim under 42 U.S.C. § 1983 because it does not plausibly allege that Barnard, Bates, or Gantt acted "under color of state law." See Appleton, 397 Mass. at 818. Likewise, the complaint fails to state a claim under the ADA because it does not plausibly allege that any of these defendants qualify as a "public entity" under the ADA, see 42 U.S.C. §§ 12131-12132, or suggest how the ADA is otherwise implicated.

6. Commonwealth defendants. The complaint raises various civil rights claims against the Massachusetts Department of Public Health (DPH) and its employees, all of which stem from an

administrative "[u]nauthorized [d]eleading" complaint that DPH issued to Bostwick in 2008. Bostwick alleges that he requested an adjudicatory hearing on the administrative complaint, but that DPH denied the request on the ground that, because "lead violations remain[ed] on [Bostwick's] property," he was not entitled to a hearing pursuant to 105 Code Mass. Regs. § 460.900. As best we can discern, all of the claims against DPH and its employees are challenging that denial.

These claims were correctly dismissed as barred by claim preclusion. In 2010 Bostwick sued DPH and others in Superior Court, asserting a claim for judicial review of DPH's refusal to hold an adjudicatory hearing and seeking a declaration that 105 Code Mass. Regs. § 460.900 is unconstitutional. A judge allowed DPH's motion to dismiss, concluding that the regulation was "not unconstitutional as applied" and that Bostwick "ha[d] no present right to a hearing" because he did "not claim that his premises [was] free of lead." Bostwick did not file an appeal. The judge's dismissal order therefore became a final judgment on the merits. See Mestek, Inc. v. United Pac. Ins. Co., 40 Mass. App. Ct. 729, 731 (1996). As the requirement of identity or privity of parties is also satisfied, see DeGiacomo v. Quincy, 476 Mass. 38, 41 (2016); Giedrewicz v. Donovan, 277 Mass. 563, 569 (1931), the final judgment rendered in the 2010 action precludes

Bostwick from relitigating his challenges to DPH's denial of a hearing.

Additionally, the claims for money damages against DPH and the DPH employees in their official capacities are barred by sovereign immunity. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 64 (1989); Laubinger v. Department of Revenue, 41 Mass. App. Ct. 598, 601-602 (1996). And to the extent Bostwick seeks damages from the DPH employees in their individual capacities, the complaint's allegations fail to plausibly suggest that the employees' individual actions violated Bostwick's constitutional rights. See Iannacchino, 451 Mass. at 636. Likewise, the complaint's allegations do not plausibly suggest a violation of a "clearly established" constitutional right, as is necessary to overcome the employees' assertion of qualified immunity. District of Columbia v. Wesby, 138 S. Ct. 577, 590 (2018).

We construe the claims against the Middlesex Superior Court to be principally seeking money damages based on events that occurred in Bostwick's 2009 lawsuit against Santander and Fannie Mae and in his 2010 lawsuit against DPH. In particular, as best we can discern, the complaint alleges that Bostwick's disabilities -- emotional distress; depression; anxiety; inability to think, concentrate, and sleep; and physical impairments -- entitled him to some unspecified ADA

accommodation at the summary judgment stage of the 2009 action.

The complaint also alleges that the judge in the 2010 action violated Bostwick's civil rights by holding a motion to dismiss hearing, purportedly in violation of the automatic stay, and by not recusing himself.

The ADA claim was correctly dismissed for lack of factual allegations plausibly suggesting an entitlement to relief. The complaint sets forth no facts suggesting that Bostwick was "excluded from participation in or denied the benefits of [the Middlesex Superior Court's] services, programs, or activities or was otherwise discriminated against" by the judge in the 2009 action "by reason of [Bostwick's] disability." Parker v.

Universidad de Puerto Rico, 225 F.3d 1, 5 (1st Cir. 2000).

Rather, the complaint alleges at most that Bostwick's

disabilities made it difficult for him to oppose Santander's and Fannie Mae's summary judgment motion in the 2009 action.

Bostwick fully litigated that matter through appeal, however, including the question whether the judge should have continued the summary judgment hearing pursuant to Mass. R. Civ. P.

56 (f), 365 Mass. 824 (1974).⁹ Even construing the complaint

⁹ On appeal we rejected Bostwick's argument that the judge erred, stating that "[t]he judge continued the hearing at least once, and Bostwick . . . failed to identify any material fact that he might hope to uncover with additional time." Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014). Nowhere in his current complaint does Bostwick allege facts plausibly

liberally, we conclude that its allegations are insufficient to state a viable claim under the ADA. See Iannacchino, 451 Mass. at 636.

The civil rights claims for damages were correctly dismissed under the doctrine of sovereign immunity. See Will, 491 U.S. at 64; Laubinger, 41 Mass. App. Ct. at 601-602. Injunctive relief, to the extent requested, was also unavailable because the Middlesex Superior Court is not a "person" within the meaning of 42 U.S.C. § 1983. See Will, supra; Lopes v. Commonwealth, 442 Mass. 170, 179-180 (2004). Moreover, even had Bostwick sued an individual court actor, the complaint contains no allegation of an ongoing constitutional violation; thus, it does not plausibly suggest an entitlement to prospective injunctive relief. See Papasan v. Allain, 478 U.S. 265, 277-278 (1986); Lopes, supra.

We construe the claims against this court to be seeking money damages for asserted violations of the ADA. In his reply brief, Bostwick objects to a panel of this court resolving these claims. In these circumstances we conclude that it would serve "the efficient administration of justice" to report this part of the appeal to the Supreme Judicial Court pursuant to G. L.

suggesting that the judge violated the ADA by not granting further continuances.

c. 211A, § 12. Commonwealth v. Vasquez, 75 Mass. App. Ct. 446, 462 (2009), S.C., 456 Mass. 350 (2010).

7. Unknown defendants. The second judge denied Bostwick's motion to vacate the judgment of dismissal as to the unknown defendants, finding that Bostwick did "not ask[] for an extension of time to make service" and that there was "no good cause to extend time for service." Bostwick has failed to demonstrate that this was an abuse of discretion. See McIsaac v. Cedergren, 54 Mass. App. Ct. 607, 612 (2002), quoting Tai v. Boston, 45 Mass. App. Ct. 220, 224 (1998) (appellate court will not reverse denial of motion to vacate judgment "except upon a showing of a clear abuse of discretion"). The claims against the unknown defendants were therefore properly dismissed.¹⁰

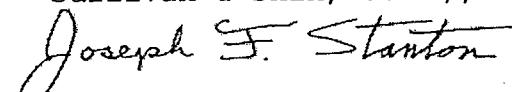
Conclusion. So much of the judgment dated September 27, 2016, dismissing Bostwick's claims against Santander and Fannie Mae, to the extent they challenge the foreclosure on 44 Chestnut Street, is vacated. So much of the appeal from the judgment dated May 17, 2018, as concerns the Appeals Court is reported to the Supreme Judicial Court pursuant to G. L. c. 211A, § 12. The

¹⁰ 44 Chestnut Street, Wakefield, Mass. was among the defendants on whom no service was made and thus should have been included in the judgment of dismissal under Superior Court Standing Order 1-88. Furthermore, 44 Chestnut Street, Wakefield, Mass. is not an entity that is capable of being sued. Accordingly, the judgment is amended to include dismissal of the claims against this defendant.

judgment dated July 11, 2017, as to the unknown defendants is amended to include dismissal of all claims against 44 Chestnut Street, Wakefield, Mass.; as so amended, the judgment is affirmed. The remaining judgments are also affirmed, and the matter is remanded for further proceedings consistent with this memorandum and order.¹¹

So ordered.

By the Court (Green, C.J.,
Sullivan & Shin, JJ.¹²),



Clerk

Entered: January 22, 2021.

¹¹ To the extent we have not specifically addressed any of Bostwick's arguments, we see nothing in them warranting relief.

¹² The panelists are listed in order of seniority.

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 15-05636RICHARD D. BOSTWICK, individually¹vs.44 CHESTNUT STREET, WAKEFIELD, MASS. & others²MEMORANDUM OF DECISION AND ORDER ON COMMONWEALTH
DEFENDANTS' MOTION TO DISMISS

The plaintiff, Richard Bostwick ("Bostwick"), filed this action against the Massachusetts Appeals Court ("Appeals Court"); Middlesex Superior Court; the Massachusetts Department of Public Health ("DPH"); and DPH employees Paul Hunter ("Hunter"), Warren Laskey ("Laskey"), and Donna Levin ("Levin") (collectively, the "Commonwealth Defendants") setting forth various claims arising out DPH's enforcement activities at Bostwick's home in Wakefield. Now before the Court is the Commonwealth Defendants' Motion to Dismiss. For the following reasons, the Commonwealth Defendants' motion will be ALLOWED.

BACKGROUND

For the purposes of the present motion, the court accepts the factual allegations in Bostwick's Amended Complaint as true and makes all reasonable inferences in his favor. *General Motors Acceptance Corp. v. Abington Cas. Ins. Co.*, 413 Mass. 583, 584 (1992).³

¹ And Richard D. Bostwick as a Class of One

² Unknown Future Property Owners of Defendant 44 Chestnut Street, Wakefield, Mass.; Unknown Future Title Insurance Companies; Santander Bank, N.A.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims; Unknown the Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Gant; Unknown Officers and Directors of the Classic Group, Inc.; Unknown Insurance Companies insuring the Classic Group, Inc., Officers and Directors; the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Paul N. Hunter; Donna Levin; Warren M. Laskey.

³ Along with the Amended Complaint, the court will consider documents upon which the allegations of the Amended Complaint rely. See *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 (2004).

Considered in that manner, the Amended Complaint provides the following factual background.

Bostwick owns a multifamily home in Wakefield ("Property"). In 2001 and 2002, Bostwick worked with Leonard J. Sims ("Sims") and The Classic Group, Inc. ("Classic") to delead the Property. In August 2008, DPH inspected the Property and determined that Sims and Classic had conducted deleading activities therein without statutorily required licenses and permits. DPH also determined that lead hazards remained at the Property.

On September 2, 2008, DPH filed an Unauthorized Deleading Complaint against the Property, which stated that DPH would not issue the Property a "Letter of Unauthorized Deleading" until Bostwick took steps to address the remaining lead hazards.³ Bostwick alleges that he has not marketed or leased the rental units within the Property since September 2008, because given DPH's complaint, Bostwick may be strictly liable in the event a child visits the Property and develops lead poisoning.

On March 2, 2010, Bostwick served DPH with a "Notice of Claim for an Adjudicatory Proceeding" concerning the September 2008 Unauthorized Deleading Complaint. DPH denied Bostwick's request for an adjudicatory proceeding on April 12, 2010, and informed Bostwick that "pursuant to 105 CMR 460.900, you are not entitled to an adjudicatory hearing since as you know, lead violations remain on your property . . .".⁴

On May 7, 2010, Bostwick filed a complaint against DPH, Sims, and Classic in Middlesex Superior Court ("May 2010 Complaint"). See *Bostwick v. Department of Pub.*

³ A Letter of Unauthorized Deleading certifies that a property has met lead abatement standards despite the deleading work having been performed by unauthorized contractors.

⁴ Section 460.900 of title 150 of the Massachusetts Code of Regulations provides for a hearing as follows: "If a hearing is requested . . . and if the owner has complied with the Order to Correct Violation(s) as required by these regulations, the hearing shall be provided within 10 days of request for the hearing. . . . Because violations of M. G. L. c. 111, § 196 and 197 are considered emergency matters pursuant to § 198, no administrative hearing shall be held in connection with any violation of M. G. L. c. 111, § 197 except pursuant to this regulation."

Health, Middlesex Civil Action No. 2010-01775. Pursuant to the May 2010 Complaint, Bostwick sought judicial review of DPH's decision to deny him an adjudicatory hearing and challenged the constitutionality of 105 Code Mass. Regs. § 460.900. On March 2, 2011, the court (Wilkins, J), dismissed Bostwick's May 2010 Complaint, holding, "(1) 105 C.M.R. 460.900 is not unconstitutional as applied to the facts of this case and (2) the plaintiff has no present right to a hearing, inspection or other relief from the Department of Public Health or to include Sims or Classic in any present claim against the Department of Public Health."

On March 14, 2011, Bostwick asked the court to vacate its decision to dismiss his May 2010 Complaint because, according to Bostwick, that decision was in violation of an automatic stay that went into effect when Classic filed for bankruptcy on January 25, 2011. The court denied Bostwick's request to vacate the dismissal on March 21, 2011.

On March 29 and April 14, 2011, Bostwick went to the Appeals Court clerk's office and told the clerks that he intended to appeal the Middlesex Superior Court's March 2, 2011 denial of his request to vacate the dismissal of his May 2010 Complaint. According to the Amended Complaint, Bostwick expressed his concern that if he moved forward with an appeal at that time he would be in civil contempt of the United States Bankruptcy Court for violating Classic's automatic stay. Bostwick alleges that despite his concerns, the clerks told him that "the Appellate Clock under Rule 4 has started and there is no way to stop it."

On May 7, 2009, Bostwick brought an unrelated civil suit in Middlesex Superior Court against Santander Bank, N.A. ("Santander") and Federal National Mortgage Association ("Fannie Mae") regarding an impending foreclosure sale of the Property. See *Bostwick v. Sovereign Bank*, Middlesex Civil Action No. 2009-01755. On December 29, 2011, Santander and Fannie Mae served Bostwick a joint motion for summary judgment.

On January 20, 2012, Bostwick filed an emergency motion requesting additional time to complete his opposition to Fannie Mae and Santander's motion for summary judgment. Among the reasons cited in support of his request were ongoing discovery disputes, Bostwick's impending foreclosure, and "given [Bostwick's] financial problems and emotional distress related medical problems." The court allowed Bostwick's emergency motion and extended the due date of his opposition until February 6, 2012.

On February 14, 2012, Bostwick filed a document titled "Plaintiff's Mass. R. Civ. P. Rule 56(f) Affidavit Concerning Plaintiff's Opposition to Defendants' Joint Motion for Summary Judgment." Within that document, Bostwick again asked the court for additional time to file his opposition because he needed to conduct additional discovery. Additionally, Bostwick's motion explicitly stated that he had been unable to file a timely opposition because he had been busy preparing forty-two other motions to compel discovery.

On April 10, 2012, Bostwick filed a document titled "Cross-motion to Strike All Summary Judgment References by Defendants to District Court Case #11-10662-GAO Concerning Plaintiff's Opposition to Defendants' Joint Motion for Summary Judgment and Plaintiff's Request for Continuation of Summary Judgment to Permit Discovery to be had Where Affidavits are Unavailable." Bostwick's April 10, 2012 motion also included an affidavit regarding his emotional distress. In particular, Bostwick alleged that when he received Santander and Fannie Mae's motion for summary judgment, his fear of foreclosure, depression, and anxiety increased and substantially limited his ability to think, concentrate, and sleep, which in combination with problems caused by sleep apnea, rendered Bostwick unable to complete an opposition to the motion for summary judgment. Bostwick contends that each of these ailments

was supported by an affidavit from a mental health counselor.⁵ On September 12, 2012, the court (Curran, J.) allowed Santander and Fannie Mae's motion for summary judgment.

DISCUSSION

I. Standard of Review

Massachusetts Rule of Civil Procedure 12(b)(6) provides that a plaintiff's complaint may be dismissed as a whole or in part for failure to state a claim upon which relief may be granted. In considering a motion to dismiss, this court takes "as true the allegations in the complaint and favorable inferences drawn therefrom." *Lipsitt v. Plaud*, 466 Mass. 240, 241 (2013). To survive a motion to dismiss, "a complaint . . . does not need detailed factual allegations," but "requires more than labels and conclusions," and must contain "allegations plausibly suggesting (not merely consistent with) an entitlement to relief." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). Dismissal under Mass. R. Civ. P. 12(b)(6) is proper where a reading of the complaint establishes beyond doubt that the facts alleged do not support a cause of action that the law recognizes, such that the plaintiff's claim is legally insufficient. *Nguyen v. William Joiner Ctr. for the Study of War & Soc. Consequences*, 450 Mass. 291, 294 (2007).

II. Analysis

A. Claims Against DPH, Hunter, Levin, and Laskey

Citing Middlesex Civil Action No. 2010-01775, the Commonwealth Defendants argue that Bostwick's claims against it must be dismissed because they are barred by the doctrine of claim preclusion. The Commonwealth Defendants are correct.

⁵ It does not appear that the court addressed Bostwick's April 2012 request for an extension, presumably because it was filed well past the February 6, 2012 due date of his opposition, and after Bostwick's February 14, 2012 request for an extension, which asserted entirely different grounds in support thereof.

“The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated in the action.” *Heacock v. Heacock*, 402 Mass. 21, 23 (1988). Claim preclusion requires: (1) identity or privity of the parties, (2) identity of the cause of action, and (3) a prior final judgment on the merits. See *Massaro v. Walsh*, 71 Mass. App. Ct. 562, 565 n.5 (2008).

Here, there is no dispute that Bostwick and DPH were parties in Middlesex Civil Action No. 2010-01775. To determine whether there is sufficient identity of the causes of action, the court applies a transactional approach to “extinguish subsequent claims with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 570 (2004) (citations omitted). An examination of Bostwick’s May 2010 Complaint reveals that the transactions at issue in both cases, which concern DPH’s September 2008 complaint and its decision not to grant Bostwick an adjudicatory hearing, are identical.

Finally, the court must consider whether the dismissal of Bostwick’s May 2010 Complaint operated as a final judgment on the merits. Although there is not perfect unity between Judge Wilkin’s articulated findings in Middlesex Civil Action No. 2010-01775 and each distinct factual allegation in Bostwick’s Amended Complaint in the present action, the crux of Bostwick’s claims against DPH are the same. Inasmuch as Judge Wilkins found that “105 C.M.R. 460.900 is not unconstitutional as applied to the facts” of Bostwick’s case and that Bostwick has “no present right to a hearing, inspection or other relief from the Department of Public Health,” his dismissal of Bostwick’s claims is a final decision on the merits as to the propriety of DPH’s enforcement actions against the Property, and precludes all of Bostwick’s claims against DPH in the present action. See *Goulet v. Whitin Mach. Works*, 399 Mass. 547,

554 (1987) ("[A] second judge does not have the power to rule differently from the first judge on a case, an issue, or a question of fact or law once decided in order to reach a just result.") (quotation omitted).⁶

⁶ In an effort to preclude further challenges to the propriety of DPH's enforcement actions against Bostwick, the Court feels impelled to briefly expand on *why* these actions do not violate Bostwick's constitutional rights. In particular, Bostwick contends that DPH's actions constituted a bill of attainder, violated the Eighth Amendment Prohibition on excessive fees, violated his rights to due process, to petition, and equal protection, and constituted a regulatory taking of the Property.

Starting with Bostwick's suggestion that DPH's actions constituted a bill of attainder, it is well established that a legislative enactment "to curb behavior which [the legislature] regard[s] as harmful to the public welfare" is *not* a bill of attainder. See *York v. Limington*, 2003 U.S. Dist. LEXIS 17786 at * 21 (D. Me. 2003), quoting *WMX Techs., Inc. v. Gasconade Cnty., Mo.*, 105 F.3d 1195, 1202 (8th Cir. 1997). As a matter of law, "[t]he presence of lead based paint on a dwelling or dwelling unit," is a condition that "always [has] the potential to endanger or materially impair the health or safety, and well-being of the occupants or the public." 105 Code Mass. Regs. § 410.750(j). Accordingly, DPH's actions in relation to the presence of lead at the Property, which were taken in furtherance of the Legislature's mission to protect the public from exposure to lead, were not a bill of attainder. Cf. *Commonwealth v. Sisson*, 189 Mass. 247, 252 (1905) (holding that the DPH is not "required to act on sworn evidence" nor "bound to act only after a hearing or to give a hearing to the plaintiff when he asks for one; and its action is final, as is the action of the Legislature in enacting a statute.").

With regard to Bostwick's claim that DPH's actions constituted a regulatory taking, "[a] prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking . . . Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. . . ." *Mugler v. Kansas*, 123 U.S. 623, 668-669 (1887). Moreover, "[t]he exercise of the police power by . . . the prohibition of [a property's] use in a particular way, whereby its value becomes depreciated, is very different from . . . depriving a person of his property without due process of law . . . the supervision of the public health and the public morals is a governmental power, continuing in its nature, and to be dealt with as the special exigencies of the moment may require . . . for this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself." *Mugler*, 123 U.S. at 669 (1887) (quotations omitted). It is worth noting that DPH's lead paint regulations are comprehensive, reasonably definite, and carefully drafted. As a result, property owners may know in advance what is or may be required of them and what standards and procedures will be applied to them so as not to deprive them of their due process. See *Castle Estates, Inc. v. Park & Planning Bd.*, 344 Mass. 329, 334 (1962).

Bostwick's equal protection claim appears to assert that DPH's lead paint regulations have a disproportionate impact on persons like himself who are indigent and/or disabled. Assuming, *arguendo*, that the DPH's regulations implicated a fundamental right or suspect classification, DPH's regulations are nonetheless narrowly tailored to further the legitimate and compelling government interest of protecting the public from the hazards of lead, and thus do not violate Bostwick's right to equal protection. See generally *Commonwealth v. Racine*, 372 Mass. 631 (1977) (discussing the compelling government interest to protect children from the dangers of lead).

Last, Bostwick characterizes the \$275,888.00 cost of deleading the Property as an "excessive fine" in violation of the Eighth Amendment. The excessive fines clause of the Eighth Amendment is only violated where disputed fees are "fines." Here, Bostwick is not being fined at all. He is simply required to delead the Property at his own expense if he wishes to obtain a Letter of Unauthorized Deleading.

Although DPH employees Hunter, Levin, and Laskey were not parties to Middlesex Civil Action No. 2010-01775, Bostwick's claims against DPH in that action were based on the same actions that Bostwick challenges in the present action. Hunter, Levin, and Laskey engaged in the enforcement actions at issue on behalf of DPH. The judgment that those actions did not violate Bostwick's constitutional rights in Middlesex Civil Action No. 2010-01775, bars Bostwick from bringing the present case against Hunter, Levin, and Laskey for the same conduct. See *Giedrewicz v. Donovan*, 277 Mass. 563, 569 (1931) ("As a matter of public policy and in the interest of accomplishing justice . . . if it is clearly established, in the trial of an action either against the employee or against the principal for damages caused by the employee's negligent conduct, that the employee is not negligent, the judgment in the case first tried is a bar to a subsequent action by the same plaintiff for the same negligent act of the same employee.").⁷

For these reasons, the Commonwealth Defendants' Motion to Dismiss is ALLOWED as to all claims against DPH, Hunter, Levin, and Laskey.

B. Claims Against Middlesex Superior Court and the Appeals Court

Bostwick's claims against the Middlesex Superior Court and the Appeals Court fall into two broad categories: (1) alleged violations of Bostwick's constitutional rights and (2) purported violations of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132. The Court will address each of these, in turn.⁸

⁷ Even if the claims against Hunter, Levin, and Laskey were not barred by the doctrine of claim preclusion, those claims must still be dismissed because Hunter, Levin, and Laskey are entitled to qualified immunity. "Qualified immunity protects public officials from civil liability and the burdens of litigation for performing discretionary acts that a reasonable official would believe lawful." *Eisenberg v. Wall*, 607 F. Supp.2d 248 (D. Mass. 2009), citing *Rivera Rodriguez v. Beninato*, 469 F.3d 1, 4 (1st Cir. 2006). The doctrine "protects all but the plainly incompetent or those who knowingly violate the law." *Rivera Rodriguez*, 469 F.3d at 4, quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Where Bostwick has failed to set forth any allegations that would plausibly suggest Hunter, Levin, or Laskey engaged in any conduct that they would have reason to believe was unlawful, Hunter, Levin, and Laskey are entitled to qualified immunity.

⁸ The Amended Complaint also alleges that the Middlesex Superior Court's denial of his request to vacate the

1. Constitutional Violations

Bostwick avers that when Judge Wilkins dismissed Middlesex Civil Action No. 2010-01775, Judge Wilkins thus violated Bostwick's constitutional rights in the same manner that DPH had allegedly violated Bostwick's constitutional rights. Bostwick contends that he named Middlesex Superior Court as a defendant for these alleged violations because it is "is vicariously liable for the actions of Justice Douglas H. Wilkins under the doctrines of Respondeat Superior and the Restatement of Agency." The court does not agree.

To set forth a claim against a person or entity under the doctrine of respondeat superior or premised on a agency relationship, a plaintiff must establish that a servant or agent committed a wrongful act or omission within the scope of the servant's or agent's obligations to his or her employer or principal. See *Petrell v. Shaw*, 453 Mass. 377, 384 (2009). Here, Bostwick cannot establish that Judge Wilkins committed *any* wrongful acts or omissions within the scope of his employment at the Middlesex Superior Court because Judge Wilkins' actions during the course of his exercise of general jurisdiction over Bostwick's case are immune from civil liability. See *Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978); *Pierson v. Ray*, 386 U.S. 547, 554 (1967) ("Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction . . ."). Accordingly,

dismissal of Bostwick's May 2010 Complaint violated the automatic stay that went into effect as to Classic when it filed for bankruptcy. Bostwick does not have standing to challenge violations of Classic's automatic stay. "The trustee in bankruptcy acts as representative of the estate. It is the trustee who 'has capacity to sue and be sued.'" *In re Rankin*, 438 Fed. App'x 420, 424 (6th Cir. 2011), quoting 11 U.S.C. § 323(b). "The [Bankruptcy] Court may also confer standing with the consent of the trustee provided the delegation of standing is in the best interest of the estate and necessary and beneficial." *In re Ampal-Am. Isr. Corp.*, 502 B.R. 361, 368 n.4 (N. Y. S. D. 2013). There is no evidence that the Bankruptcy Court conferred standing to Bostwick, and highly unlikely that the trustee would consent to do so in order for Bostwick to revive an action against Classic's bankruptcy estate. With regard to Bostwick's contention that the dismissal of his May 2010 Complaint during the automatic stay effectively barred him from filing an appeal, the court directs Bostwick to 11 U.S.C. § 108 (c), which provides that "if applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual [protected by an automatic stay], and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—(1) the end of such period . . . or (2) 30 days after notice of the termination or expiration of the stay . . ."

Bostwick has failed to set forth allegations that plausibly suggest Judge Wilkins committed a wrongful act or omission that the Middlesex Superior Court may be held accountable for under the doctrine of respondeat superior or the laws governing agency relationships.

Assuming, for the sake of argument, that the Amended Complaint *had* set forth a viable claim against the Middlesex Superior Court pursuant the doctrine of respondeat superior, Bostwick's constitutional claims against the Middlesex Superior Court must still be dismissed because they are barred by the doctrine of sovereign immunity. "The doctrine of sovereign immunity provides that the Commonwealth 'cannot be impleaded into its own courts except with its consent.'" *Walter E. Fernald Corp. v. The Governor*, 471 Mass. 520, 523 (2015), quoting *Randall v. Haddad*, 468 Mass. 347, 354 (2014). "Consent to suit must be expressed by the terms of a statute, or appear by necessary implication from them." *Woodbridge v. Worcester State Hosp.*, 384 Mass. 38, 42 (1981). The Commonwealth has not waived its immunity for any of Bostwick's claims, nor does the Federal civil rights statute abrogate the Commonwealth's immunity.⁹ See *Lopes v. Commonwealth*, 442 Mass. 170, 178 (2004).¹⁰ For these reasons, the Commonwealth Defendants' Motion to dismiss must be ALLOWED as to Bostwick's asserted constitutional violations against the Middlesex Superior Court. The Commonwealth Defendants' Motion to dismiss must also be ALLOWED with respect to Bostwick's asserted constitutional violations against the Appeals Court, which, like Middlesex Superior Court, is shielded by sovereign immunity.

⁹ Bostwick argues that this principle violates the Supremacy Clause. Bostwick is incorrect. "The Constitution, by delegating to Congress the power to establish the supreme law of the land when acting within its enumerated powers, does not foreclose a State from asserting immunity to claims arising under federal law merely because that law derives not from the state itself but from the national power." *Boston Med. Ctr. Corp. v. Secretary of the Exec. Office of HHS*, 463 Mass. 447, 462 (2012), quoting *Alden v. Maine*, 527 U.S. 706, 732 (1999).

¹⁰ Moreover, as the Commonwealth correctly contends, the Appeals Court and Middlesex Superior Court are not "persons" for purposes of 42 U.S.C. § 1983 liability.

2. ADA Claims

Bostwick alleges that the Middlesex Superior Court and the Appeals Court violated Title II of the ADA because those courts did not give him a reasonable accommodation for his emotional distress, and in turn, he could not complete his opposition to Fannie Mae and Santander's joint motion for summary judgment during Middlesex Civil Action No. 2009-01775.

Within the realm of the judicial system, Title II imposes a "duty to accommodate," consistent with the due process principle that "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts." *Tennessee v. Lane*, 541 U.S. 509, 523 (2004) (quotation omitted). To state a claim under Title II of the ADA, a plaintiff must allege that (1) he is a qualified individual with a disability; (2) that he was either excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was otherwise discriminated against; and (3) that such exclusion, denial of benefits, or discrimination was by reason of his disability. 42 U.S.C. § 12132.

In the present case, Bostwick has failed to allege any facts that would support his claim that the Middlesex Superior Court or the Appeals Court denied him the opportunity to be heard on the basis of his alleged disabilities. Fannie Mae and Santander served Bostwick their motion for summary judgment on December 29, 2011. Bostwick's January 20, 2012 emergency motion to extend the deadline to file his opposition cited his purported emotional distress and the court *allowed* that motion.

On February 14, 2012, Bostwick again asked the court for additional time to file an opposition. This time, Bostwick did not cite emotional distress among the reasons that he needed an extension, but argued that he needed more time to conduct discovery. Bostwick's February 14, 2012 motion explicitly states that the reason he could not respond to Fannie Mae

and Santander's motion for summary judgment in a "timely manner" was because he had "been working on over Forty-Two (42) Motions to Compel Discovery." Bostwick cannot demonstrate that the Middlesex Superior Court failed to provide a reasonable accommodation for his emotional distress when the court declined to extend the due date of his opposition for a second time and Bostwick's second request for an extension did not cite a medical necessity as the need for one.

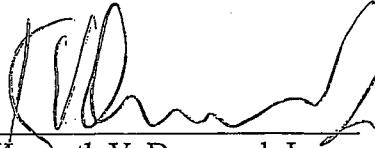
The court observes that Bostwick's alleged disability did not prevent him from continuing to litigate other aspects of Middlesex Civil Action No. 2009-01775 during the time that he was provided to prepare his opposition. To wit, Bostwick prepared and filed a nine-page emergency motion accompanied by six exhibits on January 20, 2012, and an eleven-page motion on February 14, 2012. Bostwick's eleven-page motion stated that Bostwick had been busy the previous month preparing *forty-two* motions to compel discovery. "A *bona fide* disability will not allow a party to pick and choose the . . . matters he finds to be deserving of his attention." *Barron v. Brofsky*, 2016 Mass. Super. LEXIS 5 at *13 (Mass. Super. 2016) (Gordon, J.). In light of these facts, the court's failure to extend Bostwick's opposition filing date when he filed his third request, in April 2012, did not constitute a failure to provide Bostwick a reasonable accommodation or otherwise violate Title II of the ADA. See *Tennessee*, 541 U.S. at 531-532 (stating that Title II does not "require States to employ any and all means to make judicial services accessible to persons with disabilities," but only such accommodations that would not impose "undue financial or administrative burden").

For these reasons, the Commonwealth Defendants' Motion to Dismiss must be **ALLOWED** as to Bostwick's claims that the Middlesex Superior Court violated Title II of the ADA. The Commonwealth Defendants' Motion to Dismiss is also **ALLOWED** with respect to

any factual allegations that suggest the Appeals Court discriminated against him.

ORDER

For the foregoing reasons, the Commonwealth Defendants' Motion to Dismiss is **ALLOWED** as to all claims in the Amended Complaint set forth against the Appeals Court, the Middlesex Superior Court, the Massachusetts Department of Public Health, Hunter, Laskey, and Levin.



Kenneth V. Desmond, Jr.
Justice of the Superior Court

Dated: April 14, 2016

Entered: 4/21/16

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 15-05636RICHARD D. BOSTWICK, individually¹vs.44 CHESTNUT STREET, WAKEFIELD, MASS. & others²MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS SANTANDER
BANK, N.A. AND FEDERAL NATIONAL MORTGAGE ASSOCIATION'S
MOTION TO DISMISS

Plaintiff Richard Bostwick ("Bostwick") filed this action against Santander Bank, N.A.³ ("Santander") and Federal National Mortgage Association ("Fannie Mae") (collectively, "defendants") asserting claims regarding the defendants' right to foreclose on Bostwick's home in Wakefield. Now before the court is the defendants' Motion to Dismiss. For the following reasons, Fannie Mae and Santander's motion will be ALLOWED.

On May 7, 2009, Bostwick filed a complaint against Santander and Fannie Mae asserting claims including wrongful foreclosure, fraud, emotional distress, and violation of G. L. c. 93A. See *Bostwick v. Sovereign Bank*, Middlesex Civil Action No. 2009-01755. Pursuant to this action, Santander and Fannie Mae served Bostwick a joint motion for summary judgment on December 29, 2011. The court entered summary judgment in the defendants' favor on September 12, 2012.

¹ And Richard D. Bostwick as a Class of One

² Unknown Future Property Owners of Defendant 44 Chestnut Street, Wakefield, Mass.; Unknown Future Title Insurance Companies; Santander Bank, N.A.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims; Unknown the Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Gant; Unknown Officers and Directors of the Classic Group, Inc.; Unknown Insurance Companies insuring the Classic Group, Inc., Officers and Directors; the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Paul N. Hunter; Donna Levin; Warren M. Laskey.

³ f/k/a Sovereign Bank

Bostwick filed the present action on November 23, 2015, naming Santander and Fannie Mae among twenty-three other defendants. Bostwick's Amended Complaint repeatedly cites to his 2009 action against the defendants in an apparent attempt to relitigate the same claims. These claims, which in part, allege that it is unclear who holds the mortgage and note, and thus has standing to foreclose on Bostick's home, are barred by the doctrine of claim preclusion.

Claim preclusion requires: (1) identity or privity of the parties, (2) identity of the cause of action, and (3) a prior final judgment on the merits. See *Massaro v. Walsh*, 71 Mass. App. Ct. 562, 565 n.5 (2008). Bostwick argues that the first element, requiring identity or privity of the parties, has not been met because he brought his claims in the present action "as a Class of One," whereas in Middlesex Civil Action No. 2009-01755, he was merely "Richard D. Bostwick." Bostwick is incorrect. Bringing an action as a "class of one" is a vehicle to assert an equal protection claim where a plaintiff does not allege membership in a class or group. See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Notwithstanding the lack of a viable equal protection claim against the defendants, whether Bostwick brings an action individually or as a class of one, he will always have the same "identity" for purposes of claim preclusion.

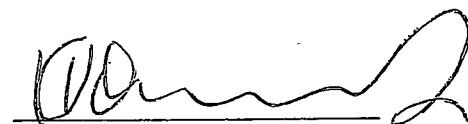
The facts that Bostwick has asserted against the defendants in the present case do not set forth a plausible claim for relief for any causes of actions that differ from Bostwick's claims in Middlesex Civil Action No. 2009-01755. It is well settled that summary judgment is a final determination on the merits for res judicata purposes. See *Tinkham v. Jenny Craig, Inc.*, 45 Mass. App. Ct. 567, 571 (1995). Thus, a final decision on the merits of Bostwick's claims entered when the court entered summary judgment in favor of the defendants in Middlesex Civil Action No. 2009-01755 (Curran, J.). See *Goulet v. Whitin Mach. Works*, 399 Mass. 547, 554 (1987) ("[A] second judge does not have the power to rule differently from the first judge on a

case, an issue, or a question of fact or law once decided in order to reach a just result.”)
(quotation omitted).

Bostwick avers that the entry of summary judgment his 2009 action was somehow not preclusive because he was unable to complete his opposition to the defendants’ summary judgment motion before judgment was entered in the defendants’ favor. The Federal Court for the District of Massachusetts, however, has found that under Massachusetts law, summary judgment is a final determination on the merits even where there was no oral argument or briefing as to whether the defendant was entitled to judgment. See *Prizio v. Revere*, 629 F. Supp. 538, 539-540 (D. Mass. 1986). For these reasons, Bostwick’s claims against the defendants must be dismissed.³

ORDER

For the foregoing reasons, Fannie Mae and Santander’s Motion to Dismiss is
ALLOWED.



Kenneth V. Desmond, Jr.
Justice of the Superior Court

Dated: April 20, 2016

[Handwritten: 4/21/16]

³ It is worth noting that Bostwick’s allegations against the defendants in the present action do not adhere to the requirements of Mass. R. Civ. P. 8(e)(1), which requires that “each averment of a pleading shall be simple, concise and direct.” Indeed, Bostwick’s allegations against the defendants are “so verbose and confusing” that they are “facially insufficient to entitle him to relief.” See *Duby v. Jordan Hospital*, 369 Mass. 626, 632 (1976); Mass. R. Civ. P. 12(b)(6). “Dismissal of a complaint for failure to meet the pleading requirements of rule 8 is, as rule 41(b)(2) provides, a matter of discretion for the judge.” *Mmoe v. Commonwealth*, 393 Mass. 617, 621 (1985). “Although some leniency is appropriate in determining whether a pro se complaint meets the requirements of [the rule of civil procedure] . . . the rules bind a pro se litigant as they bind other litigants.” *Id.* at 620.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 15-05636RICHARD D. BOSTWICK, individually¹vs.44 CHESTNUT STREET, WAKEFIELD, MASS. & others²MEMORANDUM OF DECISION AND ORDER ON ORLANS MORAN'S PARTIAL
MOTION TO DISMISS

Orlans Moran, PLLC ("Orlans Moran") moves pursuant to Mass. R. Civ. P. 12(b)(6) to dismiss the above-captioned matter, filed against it by the plaintiff, Richard Bostwick ("Bostwick"). For the following reasons, Orlans Moran's motion will be ALLOWED.

Orlans Moran is Santander Bank, N.A.'s foreclosure counsel for the property located at 44 Chestnut Street in Wakefield, of which Bostwick is the mortgagor. Bostwick's Amended Complaint alleges that on September 15, 2015, "Santander Bank, N.A., through Orlans Moran PLLC did a [sic] Land Court, Order of Notice against Boswick's Property"

To survive a motion to dismiss, "a complaint . . . does not need detailed factual allegations," but "requires more than labels and conclusions," and must contain "allegations plausibly suggesting (not merely consistent with) an entitlement to relief." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555,

¹ And Richard D. Bostwick as a Class of One

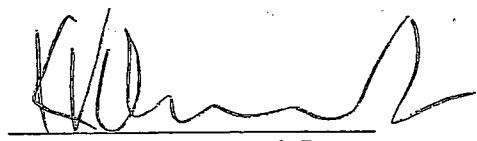
² Unknown Future Property Owners of Defendant 44 Chestnut Street, Wakefield, Mass.; Unknown Future Title Insurance Companies; Santander Bank, N.A.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims; Unknown the Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Gant; Unknown Officers and Directors of the Classic Group, Inc.; Unknown Insurance Companies insuring the Classic Group, Inc., Officers and Directors; the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Paul N. Hunter; Donna Levin; Warren M. Laskey.

complaint establishes beyond doubt that the facts alleged do not support a cause of action that the law recognizes, such that the plaintiff's claim is legally insufficient. *Nguyen v. William Joiner Ctr. for the Study of War & Soc. Consequences*, 450 Mass. 291, 294 (2007).

In this case, it appears that Bostwick's cause of action against Orlans Moran is based solely on its status as Santander's foreclosure counsel. Massachusetts courts do not recognize a cause of action against opposing counsel for fulfilling their professional duties. The Amended Complaint thus fails to state a claim against Orlans Moran upon which Bostwick is entitled to relief. Cf. *Beecy v. Pucciarelli*, 387 Mass. 589, 597 (1982) ("[A] duty in favor of an adversary of the attorney's client would create an unacceptable conflict of interest which would seriously hamper an attorney's effectiveness as counsel for his client.") (citation omitted).

ORDER

For the foregoing reasons, Orlans Moran's Motion to Dismiss is **ALLOWED**.



Kenneth V. Desmond, Jr.
Justice of the Superior Court

Dated: April 20, 2016

Entered: 4/21/16

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 15-05636

RICHARD D. BOSTWICK, individually¹

vs.

44 CHESTNUT STREET, WAKEFIELD, MASS. & others²

MEMORANDUM OF DECISION AND ORDER ON LEONARD J. SIMS, LEONARD J. SIMS CO. GENERAL CONTRACTORS, & LEONARD J. SIMS CUSTOM CARPENTRY'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Richard Bostwick ("Bostwick"), filed this action against Leonard J. Sims ("Sims"), Leonard J. Sims Co. General Contractors, and Leonard J. Sims Custom Carpentry (collectively, "defendants") setting forth various claims related to renovations Bostwick contracted the defendants to perform on his Wakefield home. Now before the court is the defendants' Motion for Summary Judgment. For the following reasons, the defendants' motion will be ALLOWED.

BACKGROUND

The summary judgment record, viewed in the light most favorable to Bostwick, as the non-moving party, contains the following facts material to this motion.

Bostwick owns a multifamily home in Wakefield ("Property"). On June 14, 2001, Bostwick and Sims entered into a contract pursuant to which Sims agreed to perform renovations

¹ And Richard D. Bostwick as a Class of One

² Unknown Future Property Owners of Defendant 44 Chestnut Street, Wakefield, Mass.; Unknown Future Title Insurance Companies; Santander Bank, N.A.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims; Unknown the Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Ganit; Unknown Officers and Directors of the Classic Group, Inc.; Unknown Insurance Companies insuring the Classic Group, Inc., Officers and Directors; the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Paul N. Hunter; Donna Levin; Warren M. Laskey.

on the Property. According to Bostwick, this work entailed deleading the Property. On August 20, 2001, the defendants demolished Bostwick's kitchen and living room ceilings. On August 27, 2001, Bostwick ordered the defendants to cease activity at the Property after concluding that the defendants caused needless damage to the Property in order to intimidate him.

On December 14, 2001, Bostwick entered into a contract with The Classic Group, Inc. ("Classic"), pursuant to which Classic agreed to delead the Property and repair damages that had been caused by the defendants. Classic finished deleading the Property in June 2002.

On June 14, 2004, Bostwick filed a complaint against the defendants in Middlesex Superior Court, setting forth claims for fraud, breach of contract, and violation of G. L. c. 93A ("2004 Case"). See *Bostwick v. Sims et al*, Middlesex Civil Action No. 04-02417. Bostwick's complaint in the 2004 Case asserted that the defendants fraudulently represented that they would help him to obtain a Letter of Compliance with respect to the lead violations at the Property, and obtain proper permits before performing deleading activities.

In August 2008, while Bostwick was still litigating the 2004 Case, the Massachusetts Department of Public Health ("DPH") inspected the Property and determined that it had been deleaded without statutorily required licenses and permits. DPH also determined that lead hazards remained at the Property. Consequently, on September 2, 2008, DPH filed an Unauthorized Deleading Complaint against the Property. The Unauthorized Deleading Complaint stated that DPH would not issue the Property a Letter of Unauthorized Deleading until Bostwick took steps to address the remaining lead hazards.³

On March 2, 2010, Bostwick served DPH with a "Notice of Claim for an Adjudicatory Proceeding" concerning the September 2008 Unauthorized Deleading Complaint. DPH denied

³ A Letter of Unauthorized Deleading certifies that a property has met lead abatement standards despite the deleading work having been performed by unauthorized contractors.

Bostwick's request for an adjudicatory proceeding on April 12, 2010, and informed Bostwick that "pursuant to 105 CMR 460.900, you are not entitled to an adjudicatory hearing since as you know, lead violations remain on your property . . ."⁴

On May 7, 2010, Bostwick filed a complaint against DPH, Sims, and Classic in Middlesex Superior Court ("2010 Case"). See *Bostwick v. Department of Pub. Health*, Middlesex Civil Action No. 2010-01775. Pursuant to the complaint in the 2010 Case, Bostwick sought judicial review of DPH's decision to deny him an adjudicatory hearing, which he argued was a violation of his civil rights. On March 2, 2011, the court (Wilkins, J), dismissed Bostwick's May 2010 Complaint, holding, in relevant part, that Bostwick "has no present right to a hearing, inspection or other relief from the Department of Public Health or to include Sims or Classic in any present claim against the Department of Public Health."

On March 14, 2011, Bostwick asked the court to vacate its decision to dismiss the 2010 Case because, according to Bostwick, that decision violated an automatic stay that went into effect when Classic filed for bankruptcy in January 2011. The court denied Bostwick's request to vacate the dismissal on March 21, 2011.

The 2004 Case went to trial in March 2014. Bostwick reserved his G. L. c. 93A claim for the trial judge, but allowed the remaining claims to be decided by a jury. At trial, the court (Krupp, J.) prohibited Bostwick from introducing certain evidence regarding the lead violations at the Property. Following a seven-day trial, judgment was entered in favor of the defendants on all counts. In entering judgment in favor of the defendants, the court (Krupp, J.) stated that he

⁴ Section 460.900 of title 150 of the Massachusetts Code of Regulations provides for a hearing as follows: "If a hearing is requested . . . and if the owner has complied with the Order to Correct Violation(s) as required by these regulations, the hearing shall be provided within 10 days of request for the hearing. . . . Because violations of M. G. L. c. 111, § 196 and 197 are considered emergency matters pursuant to § 198, no administrative hearing shall be held in connection with any violation of M. G. L. c. 111, § 197 except pursuant to this regulation."

“credit[ed] the jury’s verdict that Mr. Sims did not breach his contract with Mr. Bostwick and that he did not commit fraud in his representations to and dealings with Mr. Bostwick. I find the plaintiff has equally failed to prove that Mr. Sims committed any unfair or deceptive act or practice or that any act or practice by Mr. Sims caused any injury to Mr. Bostwick”

Bostwick filed a Notice of Appeal on April 14, 2014. On January 12, 2015, the day before his appellate brief was due,⁵ Bostwick filed a document titled “Notice of the Pro Se, Proceeding In Forma Pauperis, Appellant, Richard Bostwick, of Voluntary Dismissal of This Appeals Court Case.” On January 15, 2015, the defendants filed a motion to dismiss Bostwick’s appeal. On January 22, 2015, the Massachusetts Appeals Court issued Bostwick a notice which informed him that it intended to dismiss his appeal with prejudice if he did not file a motion to enlarge the time to file his appellant brief within fourteen days. Bostwick filed an opposition to the defendants’ motion to dismiss, but failed to file an appellate brief or motion to extend the deadline within fourteen days after he received the notice. On February 7, 2015, the Appeals Court dismissed Bostwick’s appeal with prejudice. Bostwick did not appeal the dismissal to the Supreme Judicial Court.

DISCUSSION

I. Standard of Review

Summary judgment shall be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ P. 56(c). See *Cassesso v. Commissioner of Corr.*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976). The moving party bears the burden of establishing that there is no dispute of material fact on every relevant issue. See *Sullivan v. Liberty Mut. Ins. Co.*, 444

⁵ The Appeals Court granted Bostwick two extensions of the deadline to file his brief.

Mass. 34, 39 (2005). A party moving for summary judgment who does not bear the burden of proof at trial may demonstrate the absence of a genuine dispute of material fact either by submitting affirmative evidence negating an essential element of the non-moving party's case, or by showing that the non-moving party has no reasonable expectation of proving an essential element of its case at trial. See *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991).

II. Analysis

The defendants are entitled to summary judgment on Bostwick's claims because they are barred by the doctrine of claim preclusion. Claim preclusion arises out of the public policy that "there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Harker v. Holyoke*, 390 Mass. 555, 558 (1983), quoting *Wright Mach. Corp. v. Seaman-Andwall Corp.*, 364 Mass. 683, 688 (1974). Claim preclusion requires: (1) identity or privity of the parties, (2) identity of the cause of action, and (3) a prior final judgment on the merits. See *Massaro v. Walsh*, 71 Mass. App. Ct. 562, 565 n.5 (2008).

Here, the parties are the same parties involved in the 2004 Case. Bostwick's claims against the defendants in the present case, which seek damages for tort and contract claims, statutory violations, and violations of Bostwick's civil rights all arise from the same set of facts as his 2004 Case. In his opposition, Bostwick appears to concede that he is attempting to relitigate the claims he brought against the defendants in 2004, stating that "[a] new 'Bostwick v. Sims 04-02417' trial for the same cause; namely, breach of contract, G. L. c. 93A, and misrepresentation/fraud for the NOT admitted claims, facts and evidence is in order" Indeed, the facts that Bostwick asserts against the defendants in the present case, which all arise

from the defendants' 2001 work on the Property, do not establish any causes of actions that differ from or could not have been litigated in his 2004 Case. See *Gloucester Marine Rys. Corp. v. Charles Parisi, Inc.*, 36 Mass. App. Ct. 386, 391 (1994) ("[C]laim preclusion bars not only relitigation of all matters decided in a prior proceeding but those that could have been litigated as well.").

Moreover, Bostwick and the defendants engaged in full and fair litigation on the merits of all of Bostwick's claims arising out of defendants' work on the Property not only in Superior Court, but also in the Appeals Court after Bostwick availed himself of the opportunity to challenge the adverse judgment on appeal. See *Department of Revenue v. LaFratta*, 408 Mass. 688, 693 (1990) ("[A] dismissal with prejudice constitutes an adjudication on the merits as fully and completely as if the order had been entered after trial.") (quotation omitted). As a result, Bostwick is precluded from relitigating the same claims raised in the 2004 Case against the same defendants in this case.

Bostwick argues that he should still be allowed to proceed with the present action pursuant to Mass. R. Civ. P. 60(b). See Mass. R. Civ. P. 60(b) (granting court discretion to relieve a party from final judgment or order for reasons including excusable neglect, fraud, newly discovered evidence, and where the judgment is based on a prior judgment that was reversed or vacated). According to Bostwick, the judgment entered in the 2004 Case should be void and vacated due to myriad civil rights violations that allegedly deprived him of the right to due process and the defendants' purported fraud. Bostwick additionally argues that the judgment should be void and vacated because he relied on evidence during his 2014 trial that was based on his 2010 Case, the dismissal of which Bostwick believes should also be void and vacated.

The court addressed the purported civil rights violations and validity of the 2010 Case in two previous decisions that were issued in this case on April 21, 2016. In sum, the court (Desmond, J.) upheld the judgment entered in the 2010 Case and found that Bostwick had not set forth any plausible claims for civil rights violations. See *Memorandum of Decision and Order on Commonwealth Defendants Motion to Dismiss* (Docket # 35) and *Memorandum of Decision and Order on Phillip Bates and Kyle Barnard's Motion to Dismiss* (Docket #37).

Bostwick's claim that the judgment entered in his 2004 Case should be vacated pursuant to Rule 60(b)(3) because the defendants "misrepresented and fraudulently tricked [him] concerning [their] deleading work" is without merit. Though claim preclusion does not apply in cases where a plaintiff failed to pursue a claim "as a result of the other party's fraud, misrepresentation or concealment of material information," the record is void of any support for Bostwick's conclusory assertion that the defendants' misrepresented or fraudulently concealed information material to his claims. *Gloucester Marine Rys. Corp.*, 36 Mass. App. Ct. at 391.

Bostwick additionally argues that he is permitted to relitigate this action pursuant to G. L. c. 260, § 32, which states that where "an action duly commenced . . . is dismissed for insufficient service of process by reason of an unavoidable accident or of a default . . . or for any matter of form . . . the plaintiff or any person claiming under him may commence a new action for the same cause within one year after the dismissal . . ." Bostwick is incorrect. "[A]s to a case adjudicated on the merits, principles of res judicata apply and . . . G. L. c. 260, § 32 has no pertinence." *Global NAPs, Inc. v. Awiszus*, 457 Mass. 489, 501 n.19 (2010), quoting *Liberace v. Conway*, 31 Mass. App. Ct. 40, 45 (1991). As stated, Bostwick's claims were adjudicated on the merits. Therefore, G. L. c. 260, § 32 does not provide an avenue for Bostwick to relitigate them. For these reasons, the defendants' Motion for Summary Judgment is ALLOWED.

ORDER

For the foregoing reasons, the defendants' Motion for Summary Judgment is **ALLOWED** as to all claims in the Amended Complaint set forth against Leonard J. Sims, Leonard J. Sims Co. General Contractors, and Leonard J. Sims Custom Carpentry.



Kenneth V. Desmond, Jr.
Justice of the Superior Court

Dated: May 23, 2016

Entered: 5/26/16

COMMONWEALTH OF MASSACHUSETTS**MIDDLESEX, ss.****SUPERIOR COURT
CIVIL ACTION
NO. 15-05636****RICHARD D. BOSTWICK, individually¹****vs.****44 CHESTNUT STREET, WAKEFIELD, MASS. & others²****MEMORANDUM OF DECISION AND ORDER ON PHILLIP BATES AND KYLE
BARNARD'S MOTION TO DISMISS**

The plaintiff, Richard Bostwick ("Bostwick"), filed this action against Phillip Bates ("Bates") and Kyle Barnard ("Barnard") (collectively, "defendants") setting forth various claims arising out of harm that Bostwick incurred when Bostwick contracted the defendants' corporation to deleaded his multifamily residence in Winchester. Now before the court is the defendants' Motion to Dismiss. For the following reasons, the defendants' motion will be **ALLOWED**.

BACKGROUND

For the purposes of the present motion, the court accepts the factual allegations in Bostwick's Amended Complaint as true and makes all reasonable inferences in his favor. *General Motors Acceptance Corp. v. Abington Cas. Ins. Co.*, 413 Mass. 583, 584 (1992).³ Considered in that manner, the Amended Complaint provides the following factual background.

¹ And Richard D. Bostwick as a Class of One

² Unknown Future Property Owners of Defendant 44 Chestnut Street, Wakefield, Mass.; Unknown Future Title Insurance Companies; Santander Bank, N.A.; Federal National Mortgage Association; Orlans Moran PLLC; Leonard J. Sims; Unknown the Classic Group, Inc.; Kyle Barnard; Philip Bates; Richard F. Gant; Unknown Officers and Directors of the Classic Group, Inc.; Unknown Insurance Companies insuring the Classic Group, Inc., Officers and Directors; the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Paul N. Hunter; Donna Levin; Warren M. Laskey.

³ Along with the Amended Complaint, the court will consider documents upon which the allegations of the Amended Complaint rely. See *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 (2004).

Bostwick owns a multifamily home in Wakefield ("Property"). At all times relevant to this action, Bates and Barnard were corporate officers with majority ownership interests in The Classic Group, Inc. ("Classic").³ On December 14, 2001, Bostwick entered into a contract with Classic ("Contract"), pursuant to which Classic agreed to delead the Property, itemize the cost to repair damages that had been caused by a previous contractor, and subsequently, to implement those repairs ("Project"). Before Classic began to work on the Project, Bostwick relied on Classic's assurances that it did not need to obtain any licenses or permits to delead the Property because no children resided therein.

On June 13, 2002, Classic finished the deleading portion of the Project. From October 2003 to April 13, 2004, Classic worked to itemize the costs to repair other damages to the Property. In March 2004, Classic stopped working on the Project. At that time, Bates promised Bostwick that Classic would resume the Project at a later date. Despite Bates' promise, Classic never resumed the Project or provided Bostwick with an itemized report of the cost to repair the damages caused by a previous contractor.

The Amended Complaint avers that on November 14, 2007, during a deposition for an unspecified action, Bostwick discovered that Classic did not "have the required Licenses and/or Permits" for the work it performed at the Property. Following this discovery, Bostwick delivered Classic a written demand for relief pursuant to G. L. c. 93A, § 9, on December 14, 2009. Classic responded to Bostwick's demand, but did not make a reasonable offer of settlement or to otherwise grant Bostwick relief.

³ Aside from the defendants' names and addresses, the Amended Complaint does not contain a single factual allegation that indicates *who* Barnard or Bates are or what their relationship is to Classic. The only indication of such is contained in the materials attached to Bostwick's opposition. For this reason alone, Bostwick's Amended Complaint fails to state a claim against Barnard and Bates upon which relief may be granted.

In August 2008, the Massachusetts Department of Public Health (“DPH”) inspected the Property and determined that it had been deleaded without statutorily required licenses and permits. DPH also determined that lead hazards remained at the Property. Consequently, on September 2, 2008, DPH filed an Unauthorized Deleading Complaint against the Property. The Unauthorized Deleading Complaint stated that DPH would not issue the Property a Letter of Unauthorized Deleading until Bostwick took steps to address the remaining lead hazards.⁴ Bostwick has not marketed or leased the rental units within the Property since September 2008, because, given DPH’s complaint, Bostwick may be strictly liable in the event a child visits the Property and develops lead poisoning.

On May 7, 2010, Bostwick filed a complaint against DPH and Classic in Middlesex Superior Court (“May 2010 Complaint”). See *Bostwick v. Department of Pub. Health*, Middlesex Civil Action No. 2010-01775. Pursuant to the May 2010 Complaint, Bostwick sought judicial review of DPH’s enforcement actions against the Property. On March 2, 2011, the court (Wilkins, J.), dismissed Bostwick’s May 2010 Complaint, holding that Bostwick “has no present right . . . to include . . . Classic in any present claim against the Department of Public Health.”

On January 25, 2011, Classic filed a petition under Chapter 7 of the Bankruptcy Code, thus triggering an automatic stay of any claims against it. After Bostwick learned of Classic’s bankruptcy proceeding, he filed a motion asking the court to vacate its dismissal of Middlesex Civil Action No. 2010-01775. In support, Bostwick argued that the dismissal violated the automatic stay. The court denied Bostwick’s request on March 21, 2011.

On January 24, 2014, Bostwick obtained records from the Commonwealth’s Office of Consumer Affairs & Business Regulation concerning Classic’s compliance with the

⁴ A Letter of Unauthorized Deleading certifies that a property has met lead abatement standards despite the deleading work having been performed by unauthorized contractors.

Commonwealth's registration requirements for home improvement contractors. Bostwick alleges that when he received these documents, he discovered, for the first time, that Classic was not registered as a home improvement contractor when it deleaded the Property.

DISCUSSION

I. Standard of Review

Massachusetts Rule of Civil Procedure 12(b)(6) provides that a plaintiff's complaint may be dismissed as a whole or in part for failure to state a claim upon which relief may be granted. In considering a motion to dismiss, this court takes "as true the allegations in the complaint and favorable inferences drawn therefrom." *Lipsitt v. Plaud*, 466 Mass. 240, 241 (2013). To survive a motion to dismiss, "a complaint . . . does not need detailed factual allegations," but "requires more than labels and conclusions," and must contain "allegations plausibly suggesting (not merely consistent with) an entitlement to relief." *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). Dismissal under Mass. R. Civ. P. 12(b)(6) is proper where a reading of the complaint establishes beyond doubt that the facts alleged do not support a cause of action that the law recognizes, such that the plaintiff's claim is legally insufficient. *Nguyen v. William Joiner Ctr. for the Study of War & Soc. Consequences*, 450 Mass. 291, 294 (2007).

II. Analysis

Bostwick seeks a declaration piercing the corporate veil of Classic in order to hold Barnard and Bates liable for tort, contract, and statutory claims based on the damages Bostwick suffered as a result of Classic's unlicensed work on the Property. Piercing the corporate veil is appropriate when an individual corporate officer or shareholder may be held personally liable for a corporation's actions where the individual operated the corporation for personal benefit, or the

failure to disregard corporate formalities would lead to an unjust result. See *Pepsi Cola Metro Bottling Co. v. Checkers, Inc.*, 754 F.2d 10, 16 (1st Cir. 1985). In this case, the Amended Complaint does not contain a single allegation against Bates or Barnard that sets forth their respective roles in Classic's operations, let alone that either of them operated Classic for their personal benefit. Accordingly, the Amended Complaint contains insufficient allegations to disregard Classic's corporate form. Assuming, without deciding, that the failure to disregard Classic's corporate form in this case would be unjust, the court will discuss the merits of Bostwick's specific claims against Barnard and Bates, below.

A. Automatic Stay

Bostwick alleges that when Classic continued to pursue its motion to dismiss Bostwick's May 2010 Complaint after January 25, 2011, it violated the automatic stay. See 11 U.S.C. § 362. This claim cannot survive the defendants' Motion to Dismiss because Bostwick does not have standing to challenge the automatic stay.

In general, “[t]he trustee in bankruptcy acts as representative of the estate. It is the trustee who ‘has capacity to sue and be sued.’” *In re Rankin*, 438 Fed. App'x 420, 424 (6th Cir. 2011), quoting 11 U.S.C. § 323(b). Nonetheless, “[t]he [Bankruptcy] Court may also confer standing with the consent of the trustee provided the delegation of standing is in the best interest of the estate and necessary and beneficial.” *In re Ampal-Am. Isr. Corp.*, 502 B.R. 361, 368 n.4 (N.Y.S.D. 2013). Here, the Amended Complaint does not allege, nor is there any basis upon which the court could infer, that the Bankruptcy Court conferred standing upon Bostwick to enforce the automatic stay.⁵

⁵ Bostwick nonetheless argues that he has standing to assert a claim against the defendants for violating the automatic stay if he couches this claim as one for an abuse of process. Bostwick is incorrect. “[I]n the context of abuse of process, ‘process’ refers to the papers issued by a court to bring a party or property within its jurisdiction.” *Jones v. Brockton Pub Markets, Inc.*, 369 Mass. 387, 390 (1975). Therefore, a motion to dismiss is not “process.”

Accordingly, the defendants' Motion to Dismiss is ALLOWED with respect to all of Bostwick's claims against Barnard and Bates for violations of the automatic stay.

B. Americans with Disabilities Act

Bostwick contends that the defendants violated Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12165. Title II provides that public entities shall not discriminate on the basis of disability or exclude qualified disabled individuals from participating in programs or activities. See 42 U.S.C. § 12132. A "public entity" is any department, agency or instrumentality of a state or local government. See *id.* at § 12131. Bostwick has not stated a claim under the ADA because he has not alleged facts sufficient to show that the defendants are public entities as that term is defined by the ADA. It follows that the defendants' Motion to Dismiss must be ALLOWED as to all of Bostwick's claims against Barnard and Bates for violations of the ADA.

C. Federal Civil Rights Act

Bostwick also seeks to recover from the defendants under 42 U.S.C. § 1983, the Federal Civil Rights Act. To establish a claim under § 1983, a plaintiff must allege that the defendant violated the plaintiff's civil rights while acting "under color of state law." See *Appleton v. Hudson*, 397 Mass. 812, 818 (1986); *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Here, the Amended Complaint does not allege that the defendants acted "under color of state law" during the course of any conduct, let alone while violating Bostwick's constitutional rights. Therefore, the defendants' Motion to Dismiss must be ALLOWED as to all of the claims Bostwick has asserted against Barnard and Bates under the Federal Civil Rights Act.

D. Massachusetts Statutory Claims

The Amended Complaint asserts numerous claims against the defendants for violations of various chapters of the Massachusetts General Laws. First, Bostwick alleges that the defendants violated the provisions of G. L. c. 143, which “impose duties upon building commissioners.” *Nolan v. Parker*, 15 Mass. App. Ct. 475, 477 (1983). This claim is without merit. Bostwick has not alleged that the defendants are building commissioners, or any basis upon which the court could infer that the defendants owed him the same duties that building commissioners owe the public under G. L. c. 143.

Bostwick next contends that the defendants violated G. L. c. 142A, which governs regulation of home improvement contractors, and G. L. c. 93A, the Commonwealth’s consumer protection statute. The defendants argue that these claims are barred by a four-year statute of limitations. See G. L. c. 142A, § 17; G. L. c. 260, § 5A. The defendants are correct.

“[A] cause of action ‘accrues on the happening of an event likely to put the plaintiff on notice.’” *White v. Peabody Constr. Co.*, 386 Mass. 121, 129 (1982) (citation omitted). Here, Bostwick’s claims under chapters 93A and 142A are based on Classic’s failure to obtain required permits and licenses before it dealeaded the Property. Paragraph 204.c of the Amended Complaint, alleges that on November 14, 2007, Bostwick first discovered “generally” that Classic violated home improvement contractor and lead poisoning prevention laws.

Accordingly, the statutory period applicable to Bostwick’s G. L. c. 142A and G. L. c. 93A claims began to run on November 14, 2007, and expired on November 14, 2011.

Bostwick nonetheless contends that the statute of limitations applicable to his G. L. c. 142A and G. L. c. 93A claims was tolled until January 2014, when he obtained documents that showed Classic was not registered as a home improvement contractor when it dealeaded the

Property. See *Lambert v. Fleet Nat'l Bank*, 449 Mass. 119, 126 (2007) (“Under the ‘discovery rule,’ [the] limitations period is subject to tolling until the plaintiff knew or should have known of the alleged injury.”). Bostwick is incorrect.

“The statute of limitations does not stay in suspense until the full extent, gravity, or permanence and consequences of the injury are known.” *Beaconsfield Townhouse Condo. Trust v. Zussman*, 49 Mass. App. Ct. 757, 762 (2000) (citation omitted). Thus, it is of no consequence that Bostwick did not acquire evidence of the exact nature of Classic’s violations until January 2014. The “general” knowledge that Classic violated home improvement contractor and lead poisoning prevention laws that Bostwick acquired on November 14, 2007 was sufficient to put Bostwick on notice of his alleged injuries, and commence the statutory period.⁶

Bostwick also asserts claims against the defendants for violations of the Commonwealth’s lead poisoning prevention laws and the regulations promulgated thereunder. The Lead Poisoning Prevention Act provides that “the owner of any premises shall be liable for all damages to a child under six years of age at the time of poisoning . . . that are caused by his failure to comply with the provisions and requirements of [this statute] and regulations pursuant to said provisions.” G. L. c. 111, § 199(a). Bostwick’s Amended Complaint explicitly states that “[n]o children were ever living or visiting or harmed” at the Property, and accordingly, does not set forth any basis upon which Bostwick would be entitled to damages or contribution from the defendants for violations of the Lead Poisoning Prevention Act. See *Ankiewicz v. Kinder*, 408 Mass. 792, 796 (1990) (lead poisoning prevention statute does not prohibit owners from seeking

⁶ Bostwick additionally argues that the limitations period was tolled until January 2014 because that is when he first discovered that Classic failed to appoint a designee pursuant to the requirements of G. L. c. 142A, § 9(c). General Laws c. 142A, § 9(c) is a law regulating home improvement contractors. As stated, Bostwick was on notice that Classic did not comply with home improvement contractor laws in November 2007, it does not matter that it took him until 2014 to determine exactly which ones.

contribution “against other parties potentially at fault, such as negligent building inspectors, lead-based paint manufacturers, and paint removal contractors”).

For these reasons, the defendants’ Motion to Dismiss must be **ALLOWED** as to all of the claims that Bostwick has set forth against the defendants under the Massachusetts General Laws.

E. Contract Claims

Bostwick sets forth claims against the defendants for breach of contract, breach of warranties, and unjust enrichment. In support of these claims, Bostwick avers that Classic breached the Contract by failing to obtain necessary licenses and permits to perform construction and deleading work at the Property. General Laws c. 260, § 2 sets forth a six-year statute of limitations on “[a]ctions of contract . . . founded upon contracts or liabilities, express or implied . . .” As stated, Bostwick was on notice that Classic had failed to obtain required licenses and permits for the Project as of November 14, 2007. Consequently, Bostwick’s right to assert these claims expired on November 14, 2013. The defendants’ Motion to Dismiss is therefore **ALLOWED** as to Bostwick’s contracts claims.

F. Tort Claims

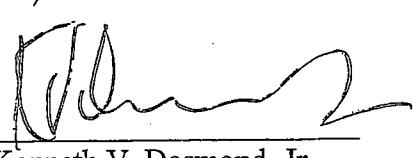
Bostwick’s tort claims for fraud, misrepresentation, and negligence are barred by the six-year statute of repose set forth in G. L. c. 260, § 2B. Section 2B requires that an “[a]ction of tort for damages arising out of any deficiency or neglect in the design, planning [or] construction” of an improvement to real estate, such as Bostwick’s claims for fraud, misrepresentation, and negligence in this case, must be commenced within “six years after the earlier of the dates of . . . [the] substantial completion of the improvement and the taking of possession for occupancy by the owner.” Section 2B “forbids the court “from considering the fact that a plaintiff did not

discover or reasonably could not have discovered the harm before the six-year period of the statute of repose expired. . . [and] bars [the court] from considering circumstances that might have tolled the running of a statute of limitations.” *Sullivan v. Iantosca*, 409 Mass. 796, 798 (1991). “The fact that a defendant caused the deficiency by gross negligence, wanton conduct, or even knowing and intentional wrongdoing makes no difference as § 2B is written.” *Id.* at 798-799. Cf. *Joslyn v. Chang*, 445 Mass. 344, 351-352 (2005) (recognizing that statutes of repose may “impose great hardship on a plaintiff,” but that “it is for the legislature . . . and not for the court, to apply the proper remedy”) (quotations omitted).

Here, Bostwick’s fraud, misrepresentation, and negligence claims are based on Classic’s failure to disclose that it was not a registered contractor when it contracted with Bostwick, and the harm that resulted from Classic deleading the Property without a license or permits to do so. The Amended Complaint states that Classic completed construction on the Property on June 13, 2002. As Bostwick retained possession of the Property, the statute of repose for tort claims arising from the project began to run no later than June 13, 2002. Pursuant to G. L. c. 260, § 2B, Bostwick’s right to bring tort claims against Classic that relate to its work on the Property expired on June 13, 2008. For these reasons, the defendants’ Motion to Dismiss is **ALLOWED** as to Bostwick’s claims against Barnard and Bates for fraud, misrepresentation, and negligence.

ORDER

For the foregoing reasons, the defendants’ Motion to Dismiss is **ALLOWED** as to all claims in the Amended Complaint set forth against Bostwick and Bates.

(Barnard 4/20/16)
(KVD 4/20/16)


Kenneth V. Desmond, Jr.
Justice of the Superior Court

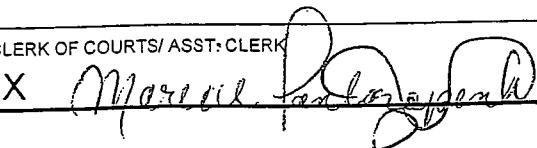
4/20/16

Dated: April 10, 2016

CLERK'S NOTICE		DOCKET NUMBER 1581CV05636	Trial Court of Massachusetts The Superior Court	
CASE NAME: Richard D Bostwick vs. 44 Chestnut Street et al			Michael A. Sullivan, Clerk of Court Middlesex County	
TO: Richard D Bostwick 44 Chestnut Street P.O. Box 1959 Wakefield, MA 01880			COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
<p>You are hereby notified that on 05/14/2018 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to Stay or Postpone This Case (#85.0): DENIED</p> <p>Dated 5/14/18</p> <p>Judge: Henry, Hon. Bruce R</p>				
DATE ISSUED	ASSOCIATE JUSTICE/ ASSISTANT CLERK			SESSION PHONE#
05/14/2018	Hon. Bruce R Henry			(781)939-2745

CLERK'S NOTICE		DOCKET NUMBER 1581CV05636	Trial Court of Massachusetts The Superior Court 
CASE NAME: Richard D Bostwick vs. 44 Chestnut Street et al		Michael A. Sullivan, Clerk of Court Middlesex County	
TO: Richard D Bostwick 44 Chestnut Street P.O. Box 1959 Wakefield, MA 01880		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
<p>You are hereby notified that on 05/14/2018 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to Vacate Default (#84.0): ALLOWED as the defendant has made a sufficient showing of good cause to remove the default and has demonstrated that he has meritorious defenses to the claims of the plaintiff. Dated 5/14/18</p> <p>Judge: Henry, Hon. Bruce R</p>			
DATE ISSUED 05/14/2018	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Bruce R Henry	SESSION PHONE# (781)939-2745	SCV016_X11 08/2014

CLERK'S NOTICE		DOCKET NUMBER 1581CV05636	Trial Court of Massachusetts The Superior Court
CASE NAME: Richard D Bostwick vs. 44 Chestnut Street et al			Michael A. Sullivan, Clerk of Court Middlesex County
TO: Richard D Bostwick 44 Chestnut Street P.O. Box 1959 Wakefield, MA 01880			COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801
<p>You are hereby notified that on 05/14/2018 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to dismiss complaint (#83.0): ALLOWED for the reasons set forth in this defendant's memorandum in support (Paper #83.1) and in Judge Desmond's decision on the co-defendants' motion to dismiss (Paper #37). Final Judgment shall enter dismissing all of the plaintiff's claims in this matter. Dated 5/14/18</p> <p>Judge: Henry, Hon. Bruce R</p>			
DATE ISSUED 05/14/2018	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Bruce R Henry	SESSION PHONE#	(781)939-2745

JUDGMENT ON MOTION TO DISMISS		Trial Court of Massachusetts The Superior Court 
DOCKET NUMBER	Michael A. Sullivan, Clerk of Court Middlesex County	
CASE NAME	COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) Gantt, Richard F.		
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) Bostwick, Richard D		
<p>This action came on before the Court, Hon. Bruce R Henry, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b),</p> <p>It is ORDERED AND ADJUDGED:</p> <p>that the Plaintiff's claims as to defendant Gantt be and hereby are dismissed. It is further ORDERED and ADJUDGED that pursuant to the Order of the Court dated April 21, 2016 that Plaintiff's claims as to the defendants Massachusetts Appeals Court, Middlesex Superior Court, the Massachusetts Department of Public Health, and DPH employees Paul Hunter, Warren Laskey and Donna Levin (collectively, the Commonwealth Defendants) and Philip Bates and Kyle Barnard be and hereby are DISMISSED.</p>		
DATE JUDGMENT ENTERED 05/17/2018	CLERK OF COURTS/ ASST. CLERK 	

CLERK'S NOTICE		DOCKET NUMBER 1581CV05636	Trial Court of Massachusetts The Superior Court	
CASE NAME: Richard D Bostwick vs. 44 Chestnut Street et al			Michael A. Sullivan, Clerk of Court Middlesex County	
TO: Richard D Bostwick 44 Chestnut Street P.O. Box 1959 Wakefield, MA 01880			COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
<p>You are hereby notified that on 07/17/2018 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion to Vacate, Modify, Set Aside & Relief from Judgment Make Findings of Fact, Amend/ Supplement Complaint Under Rules 59, 60(b), 52, & 15 (#88.0): DENIED in all respects. Dated 7/17/18</p> <p>Judge: Henry, Hon. Bruce R</p>				
DATE ISSUED 07/17/2018	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Bruce R Henry			SESSION PHONE# (781)939-2745

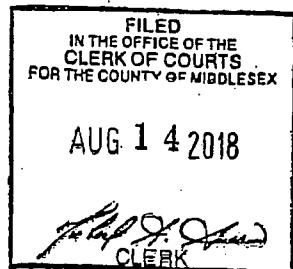
Notice of Appeal
Richard D. Bostwick et al v. 44 Chestnut Street, Wakefield, Mass. et al
Civil Action No. 1581CV05636

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO.: 1581CV05636

RICHARD D. BOSTWICK and)	
RICHARD D. BOSTWICK as a CLASS OF ONE;)	
Plaintiff(s))	Notice of
)	Appeal
v.)	
)	
44 CHESTNUT STREET, WAKEFIELD, MASS. (In Rem);)	
et al)	
Defendant(s))	



NOTICE OF APPEAL

1.0 Notice of Appeal - Introduction

1.1 Notice is hereby given that Richard D. Bostwick and Richard D. Bostwick as a Class of One, the above named Plaintiff(s), hereby Appeal "Richard D. Bostwick et al v. 44 Chestnut Street, Wakefield, Mass. et al..." --- Civil Action No. 1581CV05636, to the Appeals Court from Middlesex Superior Court.

1.2 All Matters, in Civil Action No. 1581CV05636, falling within the numerous Judgments, Intermediate Post-Judgment Motions, numerous Orders, TRO, Preliminary Injunction, Judgment of Dismissal 1-88, Motion to Stay or Postpone Case, Final Judgment, etc. and Post-Final Judgment Motion areAppealed from in all respects.

1.3 As stated in the Civil Action No. 1581CV05636 Docket (Docket Date: 04/27/2017, File Ref Nbr.: 71), the following Order to the Middlesex Superior Court was received from the Appeals Court: "04/27/2017 Notice of docket entry received from Appeals Court Please take note that, with respect to the Response to Order dated

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
C.A. NO.: 1581CV05636

RICHARD D. BOSTWICK)
Plaintiff,)
v.)
44 CHESTNUT STREET & others)
Defendants.)

RECEIVED

4/8/2022

MOTION TO RESET/ENLARGE TRACKING ORDER DATES FOR RULE 56 MOTIONS

Pursuant to Mass. R. Civ. P. 6(b), Santander Bank N.A. ("Santander"), respectfully requests that the Court reset and/or enlarge the tracking order deadlines for the Parties to serve and file summary judgment motions.

Plaintiff Richard D. Bostwick ("Bostwick") brought this action against Santander and others in the Superior Court on September 4, 2015. Santander moved to dismiss the Complaint, which motion was allowed on April 21, 2016. Bostwick then proceeded to appeal various issues before the Appeals Court and the Supreme Judicial Court. The Appeals Court reversed the original grant of dismissal on November 23, 2021, remanding the action back to this Court. The SJC issued a rescript on January 21, 2022.

As a result of Bostwick's various appeals, the tracking order deadlines on the docket for service and filing of a Motion for Summary Judgment have expired. Accordingly, Santander moves to reset/enlarge the tracking order dates to serve motions pursuant to Rule 56 through

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT

CIVIL ACTION NO.: 1581CV05636

RICHARD D. BOSTWICK and)
RICHARD D. BOSTWICK as a CLASS OF ONE;)
Plaintiff(s))
)
v.)
)
(1) 44 CHESTNUT STREET, WAKEFIELD, MASS. (In Rem))
et al;)
Defendant(s))
)

RECEIVED

4/8/2022

OPPOSITION TO

**Santander Bank N.A. ("Santander") "Motion To Reset/ Enlarge Tracking Order
Dates For Rule 56 Motions"**

WHERE

1. Pursuant to (a) Mass.R.Civ.P. Rule 6(b), (b) Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) Against Bostwick Under The Americans With Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) and (c) Appeals Court Order (19-P-589 See Exhibit 8) to Vacate the 27 September 2016 Judgment (Docket: (Exhibit 4) 09/27/2016, #51) and Consequential Allowance of Bostwick's Motion to "Vacate...27 September 2016 Judgment...Rule 59...Make Additional Findings of Fact... Rule 52...Amend/ Supplement Complaint...Add/ Substitute "Saturn Realty Group, LLC"...under Mass.R.Civ.P. Rule 15...(See Exhibit 22; Docket: (Exhibit 4) * 10/11/2016 Bostwick's Motion Rule 9E; * 11/03/2016 #54 Bostwick's Motion; * 04/05/2017 #70, 04/27/2017 #71, 05/02/2017 Appeals Court No Piecemeal Separate Judgments (d) Bostwick's Motion to Vacate...17 May 2018 Judgment for ALL Defendants (Docket: (Exhibit 4) 05/17/2018 # 86 Judgment) ...under Rule 59...Rule 60(b)...Make Additional Findings of Fact... Rule 52...Amend/ Supplement Complaint...Mass.R.Civ.P. Rule 15...(Docket: (Exhibit 4) * 05/29/2018 #87 Bostwick's Motion Rule 9E, * 06/29/2018 #88, Bostwick's Motion.)

CONSEQUENTLY

2. Bostwick Opposes Santander's Motion and Requests Relief to Reset/ Enlarge the Tracking Order with the following STEPS and DAYS from a start date of 04 April 2022; namely, (a) Step #1: (90 Days): Serve all Parties; (b) Step #2: (150 Days): Rule 12, 15, 19 and 20 Motions served and heard; (c) Step #3: (300 Days): All Discovery Requests Served and Depositions Completed, All Requests for Admissions Completed, Case assigned for Pretrial Conference; (d) Step #4: (330 Days): Rule 56 Motions Served and Heard (e) Step #5: (360 Days): Pre-Trial Conference, Trial Date, Trial.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
C.A. NO.: 1581CV05636

RICHARD D. BOSTWICK)
Plaintiff,)
v.)
44 CHESTNUT STREET & others)
Defendants.)
)

RECEIVED

4/8/2022

4/12/22 Allowed to June 6, 2022



WILKINS, J

MOTION TO RESET/ENLARGE TRACKING ORDER DATES FOR RULE 56 MOTIONS

Pursuant to Mass. R. Civ. P. 6(b), Santander Bank N.A. ("Santander"), respectfully requests that the Court reset and/or enlarge the tracking order deadlines for the Parties to serve and file summary judgment motions.

Plaintiff Richard D. Bostwick ("Bostwick") brought this action against Santander and others in the Superior Court on September 4, 2015. Santander moved to dismiss the Complaint, which motion was allowed on April 21, 2016. Bostwick then proceeded to appeal various issues before the Appeals Court and the Supreme Judicial Court. The Appeals Court reversed the original grant of dismissal on November 23, 2021, remanding the action back to this Court. The SJC issued a rescript on January 21, 2022.

As a result of Bostwick's various appeals, the tracking order deadlines on the docket for service and filing of a Motion for Summary Judgment have expired. Accordingly, Santander moves to reset/enlarge the tracking order dates to serve motions pursuant to Rule 56 through

APPENDIX E

2012 WL 5568595

Only the Westlaw citation is currently available.
Superior Court of Massachusetts,
Middlesex County.

Richard D. BOSTWICK

v.

SOVEREIGN BANK et al.

No. MICV200901755F. | Oct. 31, 2012.

MEMORANDUM OF DECISION AND ORDER

DENNIS J. CURRAN, Associate Justice.

*1 This matter is before me on the defendants' motion for summary judgment. After reviewing the plaintiff's extensive submissions and the defendants' joint memorandum of law, the motion must be ALLOWED because:

- 1.) there has been no foreclosure;
- 2.) the defendants owed no duty to remediate the lead contamination at Mr. Bostwick's property; and
- 3.) the defendants had no obligation to work out Mr. Bostwick's personal financial problems.

Mr. Bostwick's *pro se* 18-count, 250-page complaint (with attachments) revolves around three issues.

As to the first issue, Mr. Bostwick concedes that there has been no foreclosure, only a mortgage assignment. As to the

second, the defendants cannot plausibly be held liable, as a matter of law, to remediate his property. Mr. Bostwick owns the property—not the defendants. Moreover, the lead paint laws and statutes to which Mr. Bostwick refers apply to secured lenders who have taken actual physical possession, G.L.c. 111, section 197D. This has not occurred here.

Finally, Mr. Bostwick demands that his lenders—to whom he has not made a single monthly payment in four years and to whom he owes over \$350,000—were obligated to relieve him of his financial burden and ensure him with a way out of his morass. But Mr. Bostwick has never applied for either an additional loan or a loan modification. His lenders were under no legal obligation to negotiate a loan modification, *Okaye v. Bank of New York Mellon*, 2011 WL 3269686 at 1 (D.Mass. July 28, 2011), nor need they reduce Mr. Bostwick's mortgage payments simply because he demands that they do so. *Id.* As to any remaining issues, the Court relies upon and incorporates by reference the points well made in the defendants' opposition memorandum at pages 11 through 23.

ORDER

For these reasons, the defendant's motion for summary judgment must be ALLOWED as to all counts. Mr. Bostwick's complaint is hereby DISMISSED and judgment shall enter forthwith to that effect.

All Citations

Not Reported in N.E.2d, 2012 WL 5568595

85 Mass.App.Ct. 1101
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Richard D. BOSTWICK

v.
SOVEREIGN BANK & others.
No. 13-P-296.

February 24, 2014.

By the Court (GRASSO, TRAINOR & AGNES, JJ.).

**MEMORANDUM AND ORDER PURSUANT TO
RULE 1:28**

*1 Richard Bostwick appeals from a judgment of the Superior Court, entered on summary judgment, dismissing his claims against the defendants for (1) wrongful foreclosure, (2) unlawful failure to remediate lead paint contamination on his property, and (3) improper failure to offer a loan modification.² For substantially the reasons articulated by the motion judge, as amplified in the defendants' briefs, we affirm.

Preliminarily, we observe that the judgment might be affirmed for the reason, if no other, that Bostwick's brief and replacement reply brief fail to rise to the level of adequate appellate argument. See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). Even beyond that deficiency, the uncontested material facts establish that Bostwick's claims fail as a matter of law. In dismissing Bostwick's claims, the judge reasoned:

"As to the first issue, Mr. Bostwick concedes that there has been no foreclosure, only a mortgage assignment. As to the second, the defendants cannot plausibly be held liable, as a matter of law, to remediate his property. Mr. Bostwick owns the property—not the defendants. Moreover, the lead paint laws and statutes to which Mr. Bostwick refers apply to secured lenders who have taken actual physical possession, G.L. c. 111, section 197D. This has not occurred here.

"Finally, Mr. Bostwick demands that his lenders—to whom he has not made a single monthly payment in four years and to whom he owes over \$350,000—were

obligated to relieve him of his financial burden and ensure him with a way out of his morass. But Mr. Bostwick has never applied for either an additional loan or a loan modification. His lenders were under no legal obligation to negotiate a loan modification ... nor need they reduce Mr. Bostwick's mortgage payments simply because he demands that they do so."

We agree with that assessment. Bostwick's first claim fails because there has been no foreclosure, only Sovereign Bank's filing of a Land Court action pursuant to the Servicemembers Civil Relief Act. See *Beaton v. Land Ct.*, 367 Mass. 385, 390 (1975). His second claim fails because the mortgage clearly indicates that remediation of lead paint is Bostwick's responsibility. Moreover, the defendants are without authority or obligation to remediate until they have foreclosed and taken possession, neither of which has occurred here. See *Negron v. Gordon*, 373 Mass. 199, 205 (1977). Finally, absent an agreement providing that the defendants would modify his loan, the defendants were not legally obligated to offer Bostwick a loan modification after default, especially where Bostwick failed to so much as apply for a loan modification.

As was the case before the motion judge, Bostwick fails to identify on appeal any disputed *material* facts, referencing instead scores of exhibits and documents spanning hundreds of pages that, he asserts, demonstrate issues to be tried. The motion judge was not required to ferret through hundreds of pages in an effort to discern the issues that Bostwick disputes, see *Dziamba v. Warner & Stackpole LLP*, 56 Mass.App.Ct. 397, 399 (2002), and we do not discern any material facts that would preclude granting summary judgment. We reject Bostwick's claim that the judge should have continued the summary judgment hearing under Mass.R.Civ.P. 56(f), 365 Mass. 824 (1974). The judge continued the hearing at least once, and Bostwick has failed to identify any material fact that he might hope to uncover with additional time. See *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 308 (1991).

*2 The judge's implicit denial of Bostwick's motion for approval of memorandum of lis pendens was not error for the reason, if no other, that the underlying action did not involve a claim of title to Bostwick's property.

Bostwick's other assorted arguments have not been overlooked. We simply find nothing in them that requires discussion. *Commonwealth v. Domanski*, 332 Mass. 66, 78 (1954).

Judgment affirmed.

85 Mass.App.Ct. 1101, 3 N.E.3d 615 (Table), 2014 WL 683741

All Citations

Footnotes

- 1 Santander Holdings USA, Inc.; and Federal National Mortgage Association, also known as Fannie Mae.
- 2 We agree with the judge and the defendants that Bostwick's prolix complaint alleges only three discernible causes of action, none of which has merit. Resolution of these issues necessarily resolves all of Bostwick's subsidiary contentions.

End of Document

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Bostwick v. Sovereign Bank, 468 Mass. 1103 (2014)
8 N.E.3d 279 (Table)

468 Mass. 1103
(This disposition is referenced in the North Eastern
Reporter.)
Supreme Judicial Court of Massachusetts.

Opinion

DENIED.

Richard D. Bostwick

v.
Sovereign Bank

May 05, 2014

All Citations

468 Mass. 1103, 8 N.E.3d 279 (Table)

Appeal From: 85 Mass.App.Ct. 1101, 3 N.E.3d 615.

End of Document

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135 S.Ct. 715
Supreme Court of the United States
Richard D. BOSTWICK, petitioner,
v.
SOVEREIGN BANK, et al.

No. 14-6360.

Dec. 1, 2014.

Opinion

Petition for writ of certiorari to the Appeals Court of Massachusetts denied.

All Citations

135 S.Ct. 715 (Mem), 190 L.Ed.2d 447, 83 USLW 3327

Case below, 8 N.E.3d 279.

End of Document

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APPENDIX F

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 19, 2022

Mr. Richard D. Bostwick
44 Chestnut Street
P.O. Box 1959
Wakefield, MA 01880-5959

Re: Richard D. Bostwick
v. 44 Chestnut Street, Wakefield, Massachusetts, et al.
Application No. 21A611

Dear Mr. Bostwick:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Breyer, who on April 19, 2022, extended the time to and including June 20, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

NOTIFICATION LIST

Mr. Richard D. Bostwick
44 Chestnut Street
P.O. Box 1959
Wakefield, MA 01880-5959

Clerk
Supreme Judicial Court of Massachusetts
1 Pemberton Square
Boston, MA 02108

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET, WAKEFIELD, MASS.,
& others
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
SJC-13061

CASE HEADER

Case Status	Decided, Rescript issued	Status Date	02/03/2022
Nature	Real property dispute	Entry Date	02/02/2021
Appellant	Plaintiff	Case Type	Civil
Brief Status	Awaiting red brief	Brief Due	04/19/2021
Quorum	Gaziano, Lowy, Cypher, Wendlandt, Georges, Jr., JJ.		
Argued Date	11/01/2021	Decision Date	11/23/2021
AC/SJ Number	<u>2019-P-0589</u>	Citation	488 Mass. 1016
DAR/FAR Number		Lower Ct Number	1581CV05636
Lower Court	Middlesex Superior Court	Lower Ct Judge	Kenneth V. Desmond, Jr., J.
Route to SJC	Direct Entry: Certified/Reported from App. Ct. (c. 211A, s. 10B/12)		

INVOLVED PARTY

Richard D. Bostwick
Pro Se Plaintiff/Appellant
Blue brief filed

44 Chestnut Street
Defendant

Kyle Barnard
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Philip Bates
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Federal National Mortgage Association
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Richard Gantt
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Paul N. Hunter
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Paul N. Hunter
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

Warren M. Laskey
Defendant/Appellee
Awaiting red brief
Due 04/19/2021

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

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

Donna Levin
Defendant/Appellee

ATTORNEY APPEARANCE

Jeffrey J. Cymrot, Esquire

Jeffrey J. Cymrot, Esquire

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

Alex F. Mattera, Esquire

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

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

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

Mark B. Lavoie, Esquire

Mark B. Lavoie, Esquire

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

Awaiting red brief
Due 04/19/2021

Massachusetts Appeals Court
Defendant/Appellee
Red brief filed

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

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

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

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

Effie L. Gikas, Esquire

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

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

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

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

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

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

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

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> <p>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.</p> <p>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> <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.)

As of 04/25/2022 3:20pm

APPENDIX G

Page 1

Volume 1, Pages 1 - 112

Exhibits: 1 - 12

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY

SUPERIOR COURT

RICHARD D. BOSTWICK,

Plaintiff,

vs.

Docket No. CA 04-02417-D

LEONARD J. SIMS, a/k/a LEONARD

JOSEPH SIMS, LEONARD J. SIMS CO.,

LEONARD J. SIMS CUSTOM CARPENTRY,

Defendant

DEPOSITION OF PAUL N. HUNTER

Friday, December 21, 2007, 10:08 a.m.

John Adams Courthouse

Social Law Library

One Pemberton Square

Boston, Massachusetts

-----Reporter: Kathleen L. Good, CSR, RPR-----

K. L. GOOD & ASSOCIATES

Post Office Box 367

Swampscott, Massachusetts 01907

Tel. 781-367-0815 Fax 781-598-0815

Page 70	Page 72
<p>1 Q. That sequence of events could occur with or 2 without an investigation by CLPPP? 3 A. Yes. 4 Q. Given a letter of unauthorized deleading which 5 was awarded justly, is the homeowner now 6 strictly liable? 7 MR. BROWN: Objection. 8 A. Strictly liable for what? 9 Q. A lead poisoned child on the property. 10 A. Yes. 11 Q. Let me repeat it to see if I understand. 12 If the unauthorized deleading is 13 determined to be true and correct, then the 14 homeowner is subject to strict liability for a 15 lead poisoned child on the residence? 16 A. Yes. 17 Q. How is this letter of unauthorized deleading 18 recorded? 19 A. I don't understand the question. 20 Q. Is the letter of unauthorized deleading recorded 21 in the database supervised by CLPPP in your Web 22 site? 23 A. Yes. 24 Q. Consequently, there is a public document, the</p>	<p>1 Q. If the property is sold, is a letter of 2 unauthorized deleading sold with the property? 3 A. Please repeat the question. 4 Q. The letter of unauthorized deleading is now in 5 the database of lead inspections for homes in 6 Massachusetts. The current owner sells the 7 property and a new owner buys the property. 8 In the process of buying the property, 9 is this letter of unauthorized deleading still 10 with the property even though there's a new 11 owner? 12 A. Yes. 13 Q. Previously, we agreed that the original owner 14 who did the violation, previously we agreed that 15 the original owner who was part of the 16 unauthorized deleading and received a letter of 17 unauthorized deleading, that owner is strictly 18 liable for a lead poisoned child. Do you agree? 19 MR. BROWN: Objection. 20 A. They are subject to strict liability. 21 MR. BOSTWICK: Because there was an 22 objection, let me try the sentence again. 23 Q. An owner who has received a letter of 24 unauthorized deleading is subject to strict</p>
Page 71	Page 73
<p>1 letter of unauthorized deleading is a public 2 document associated with the property? 3 A. Yes. 4 Q. Is this letter of unauthorized deleading always 5 part of and with the property? 6 MR. BROWN: Objection. 7 A. Yes. 8 Q. Let me ask the question again. 9 After the letter of unauthorized 10 deleading is put into the database of lead 11 inspections for homes in Massachusetts, that 12 letter will remain there and cannot be removed. 13 A. Is that a question? 14 Q. Correct? 15 MR. BROWN: Objection. 16 Q. Yes. Is it correct? 17 A. Yes. 18 Q. Is there anything that the homeowner can do to 19 remove from the database this letter of 20 unauthorized deleading? 21 A. No. 22 Q. Is a letter of unauthorized deleading with the 23 property or with the current owner? 24 A. With the property.</p>	<p>1 liability, correct? 2 A. Yes. 3 Q. If that owner sells the property after receiving 4 a letter of unauthorized deleading, is the new 5 owner subject to strict liability for that 6 property; given the letter of unauthorized 7 deleading? 8 MR. BROWN: Objection. 9 A. Yes. 10 Q. Yes. 11 MR. BOSTWICK: There was an objection. 12 Because I don't want the sentences stricken, 13 I'll try it again. 14 Q. Any property that has a letter of unauthorized 15 deleading that is purchased by a new owner, that 16 new owner is subject to strict liability? 17 A. Yes. 18 Q. Yes. Your answer is yes. Okay. 19 If the new owner resells the property 20 that has a letter of unauthorized deleading, a 21 third owner is still subject to strict 22 liability, correct? 23 A. Yes. 24 Q. And the same is true for the fourth, fifth and</p>

Page 110

1 EXHIBITS: PAGE:
2 No. 10, Portion of 454 CMR, Division of 100
3 Occupational Safety
4 No. 11, Portion of Answers to 101
5 Interrogatories
6 No. 12, Portion of Transcript 103
7 *****

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1 PAUL N. HUNTER
2 SIGNATURE PAGE/ERRATA SHEET INFORMATION
3 For deposition taken on: December 21, 2007
4 Bostwick vs. Sims
5
6 SIGNATURE INFORMATION FOR COUNSEL
7 The original signature page/errata sheet has been sent to the
8 deponent. When complete, please send original to Richard
9 Bostwick, Att. A copy of any errata should be sent to each
10 party of record present at the deposition.
11
12 WITNESS INSTRUCTIONS
13 After reading the transcript of your deposition, please note any
14 change or correction and the reason on the errata/signature
15 page. DO NOT make any notations on the transcript itself. If
16 necessary, continue the format on a separate page.
17
18 PLEASE SIGN AND DATE the errata/signature page (before a notary
19 if requested) and return it to Mr. Bostwick.
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Page 112

Page 111

1 WITNESS: PAUL N. HUNTER
2 CASE: Bostwick vs. Sims
3 SIGNATURE PAGE/ERRATA SHEET

4 PAGE LINE CHANGE OR CORRECTION AND REASON

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22 I have read the transcript of my deposition taken December 21,
23 2007, except for any corrections or changes noted above I hereby
24 subscribe to the transcript as an accurate record of the
25 statements made by me.

26 Signed under the pains and penalties of perjury.

27 DATE _____

28 Deponent, PAUL N. HUNTER

29 On this _____ day of _____, 200____ before me, the
30 undersigned notary public, personally appeared PAUL N. HUNTER,
31 who presented satisfactory evidence of identification, to wit,
32 _____, and signed this document in my
33 presence.

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38 Notary Public in and for _____
39 My commission expires _____

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6

29 (Pages 110 to 112)

1 WITNESS: PAUL N. HUNTER.

2 CASE: Bostwick vs. Sims

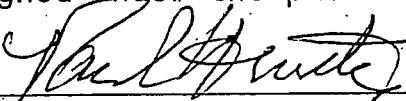
3 SIGNATURE PAGE/ERRATA SHEET

4 PAGE LINE CHANGE OR CORRECTION AND REASON

5	20	11	ABT not AT
6	25	4	Component Replacement
7	27	17	ASSISTANT NOT Accounting
8	28	5	and the Office for Children
9	40	7	Nelson not Maderson
10	54	24	Initial
11	22	9	Kelley
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22 I have read the transcript of my deposition taken December 21,
23 2007, except for any corrections or changes noted above I hereby
24 subscribe to the transcript as an accurate record of the
25 statements made by me.

26 Signed under the pains and penalties of perjury.

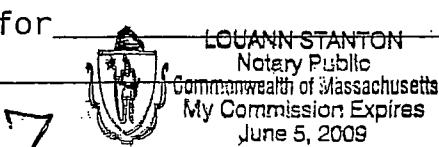
27  DATE 1/28/08

28 Deponent, PAUL N. HUNTER

31 On this 28th day of January, 2008, before me, the
32 undersigned notary public, personally appeared PAUL N. HUNTER,
33 who presented satisfactory evidence of identification, to wit,
34 _____, and signed this document in my
35 presence.36 

37 Notary Public in and for _____

38 My commission expires _____





The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Childhood Lead Poisoning Prevention Program
Northeast Regional Health Office
Tewksbury Hospital, Tewksbury, MA 01876
TEL (978) 851-7261
FAX (978) 640-1027 / (978) 851-3346
TTY (978) 851-0829

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

September 2, 2008

Mr. Richard D. Bostwick
44 Chestnut St., PO Box 1959
Wakefield, MA 01880

Dear Mr. Bostwick,

I am in receipt of a letter from private inspector Anthony Jakaitis, who reported to me that he performed a reinspection on your property located at 44 Chestnut St., #1, Wakefield MA 01880 on August 19, 2008. He reported that he observed several components which were identified as lead hazards on his initial inspection report of 2/12/1997, now were deleaded / replaced. He stated in his letter that there is no documentation provided to him that verifies the authorization of the workers for the work that was done. He also stated that there are lead hazards remaining. No letter of Unauthorized Deleading may be issued until all remaining lead hazards have been addressed by authorized workers.

Accordingly, I have opened an Unauthorized Deleading Complaint at the address noted above.

Please contact me should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Warren M. Laskey".

Warren M. Laskey
Code Enforcement Inspector, Lic. # A/Q-3757

Anthony Jakaitis
Master Lead Paint Inspector
PO BOX 400
South Weymouth, MA 02190
781-331-1565

August 21, 2008

Mr. Warren Laskey
MDPH/NERHO
Lead Program
Tewksbury Hospital
Tewksbury, MA 01876

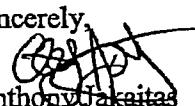
Dear Mr. Warren Laskey:

Enclosed, please find a partial reinspection report for the interior of 44 Chestnut St., #1 in Wakefield, MA. On 2/12/1997, I conducted an initial lead inspection and lead hazards were found.

On 8/19/08, I conducted a reinspection which failed, lead hazards remain throughout the property. I have documented that (9) window units and side stops had been replaced and a mantle was dipped/stripped by unauthorized workers. The contractors that the owner hired are not qualified to do lead paint removal, replacement or stripping of lead hazard surfaces. No documentation to support contractors authorization to participate in lead paint deleading activites were available at time of reinspection. Please refer to reinspection report for detailed information.

I refer this matter for your attention. Please review the information I have provided and inform me if there's anything else I can do to assist you in this matter.

Thank you for your time and if you have any questions, please call me at (617) 529-1578.

Sincerely,

Anthony Jakaitis
Master Lead Paint Inspector

cc: Dick Bostwick

OT

<p>Ques. 10. <u>What is the difference between a primary and a secondary market?</u></p> <p>Ans. Primary market: It is the market where new shares are issued for the first time. It is also known as the new issue market. It is a market where new shares are issued for the first time. It is also known as the new issue market.</p> <p>Secondary market: It is the market where existing shares are traded. It is also known as the secondary market. It is a market where existing shares are traded.</p>
--

• COMPONENTS DATES

44 Chestnut Street, Philadelphia, Pa. 19106
Property Address: _____

10

LEONARD J. SIMS CO. GENERAL CONTRACTORS

219 CHARLES STREET - READING MASS. 01867
Phone (781) 942-9270 - Fax (781) 942-9270
INVOICE

Aug. 25, 2001

Dick Bastwick
44 Chestnut Street
Wakefield MA 01880
h# 781-279-0789 w# 978-988-3974 ext 342

- Description: supply & install 9 custom made Harvey / Wood Majesty windows in 1st floor front apt. supply all new wood side stops remove all related trash

Total Stock & Labor for above items \$ 4,093.00
check deposit - \$ 2,500.00

bal. due for above windows \$ 1,593.00

- Description : supply labor only, scrape & wash picture window on 1st floor rear apt. re/install storm frame & window.
- Supply labor only : remove doors & hardware from 1st floor front apt so doors could be either repainted or dip stripped.
- Supply labor only , remove & reinstall fire place mantel.
- Supply labor & remove trash on 1st floor front apt bath floor ; remove floor tile .
- Supply labor & materials for 1st floor front apt bath room ; remove existing dbl hung window. Remove rotted framing & old sashes. Reframe opening to fit new window unit supply new wood sheathing , tar paper exterior install new window unit. Supply & install new primed pine casings, install new clapboards provided by owner.
- Remove all related trash.

Total Materials for above items \$ 475.00

Total Labor & Trash for above items \$ 1,530.00

bal. due for above \$ 2,005.00

\$ 1,593.00
+ \$ 2,005.00

GRAND TOTAL AMOUNT DUE FOR BOTH ABOVE ITEMS: \$ 3,598.00

TOTAL AMOUNT DUE \$ 3,598.00

Payment due upon receipt

11

January 14, 2002

Classic Restorations
Phil Bates
125 Walnut Street
Watertown, MA 02172

Environmental Remediation Services, Inc.
969 Main Street, Unit 208
Walpole, MA 02081
(508) 668-5363
FAX (508) 668-6116

RE: Lead Dust Sampling - 44 Chestnut Street in Wakefield, MA.

Dear Phil:

Environmental Remediation Services, Inc. was retained by Classic Restorations, Inc. to conduct lead dust wipe sampling at 44 Chestnut Street in Wakefield, MA. The samples were collected on January 8, 2002 and were analyzed on 1/10/02. The samples were collected in Unit #1 only prior to Classic Restoration, Inc. renovation procedures.

Seven samples of dust from random interior surfaces were collected and submitted to an EPA accredited laboratory for analysis. The dust wipe samples were analyzed using the SW846-7420 method and all samples tested, above the DOPH recommended levels for lead dust on the applicable surfaces tested. The current allowable levels allowable after deleading under the Massachusetts Lead Law are:

floor	50 ug/ft ²
window sills	500 ug/ft ²
window wells	800 mg/ft ²

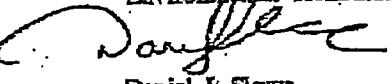
As you will notice from the enclosed results, the samples yielded results from 85.7 - 2526.6 ug/ft². The Massachusetts Lead Paint Poisoning Prevention Regulation requires the deleading of all residential dwellings in which a child under the age of six years resides. The enclosed results represent the presence of lead dust on the surfaces on the date of sampling only. This property does not appear to be in compliance with the requirements of the Massachusetts Lead Paint Poisoning Prevention Regulation. ERS, Inc. recommends, and MA Regulations require, the full lead inspection and deleading of all residential properties in which a child under the age of six resides. The above levels are set forth for post-deleading sampling after procedures conducted by a licensed Deleader Contractor. Due to the elevated levels of lead dust ERS, Inc. recommends, the proper clean up of this unit by a licensed Deleader. All surfaces should be wet wiped and HEPA vacuumed and all carpets should be removed and disposed.

Only the random seven random surfaces were assessed for the purpose of this report. The lead dust wipe samples were not collected by a licensed lead inspector but by a former lead inspector trained in the HUD protocol for the collection of lead dust samples. Recent renovations involving window replacement and ceiling removal may have caused the elevated lead dust levels in this unit.

Enclosed are the laboratory analytical results of the lead dust samples. Please give me a call if you have any questions regarding this project or the Massachusetts Lead Paint Poisoning Prevention Regulations. If your client has any questions regarding their responsibility under this regulation please have them give me a call at (508) 668-6363 so I can outline their responsibilities under the regulation.

Thank you for the opportunity to work with you on this project.

Sincerely,
Environmental Remediation Services, Inc.


Daniel J. Slowe
Environmental Consultant

Enclosure

Environmental Testing & Consulting

AGREEMENT

CLASSIC RESTORATIONS INC.

101 Walnut St
Watertown, Ma. 02472
617-926-0505

Mess. Registration # 106628 Federal ID # 04-2937794

PLEASE READ THIS AGREEMENT AND MAKE SURE YOU UNDERSTAND IT BEFORE SIGNING IT. THIS AGREEMENT HAS LEGAL FORCE AND EFFECT AND BINDS THOSE WHO SIGN IT.

Proposal submitted to:

Richard D. Bostwick
44 Chestnut Street
Wakefield, MA 01880

Work Specifications:

Remedial work on 1st floor apartment to include:

- 1) Remove and dispose of old plaster ceilings in living room and kitchen.
- 2) Repair ceilings, install strapping and straighten.
- 3) Install 1/2" plywood for tin ceiling installation.
- 4) Install 28 gauge sheet goods as barrier to 2nd floor networking.
- 5) Blueboard and plaster ceilings.
- 6) Install ceiling moldings in living room and kitchen.
- 7) Itemize cost of Damages from the previous General Contractor.
- 8) Strip @ 5 doors and 1 fireplace mantel.
- 9) Repair and modify all windows.
- 10) Install new clapboards on outside bathroom wall and paint.
- 11) Repair back window wall with tile.
- 12) Install cement board and vinyl on bathroom floor.
- 13) Install light over sink.
- 14) Caulk bathroom as needed.
- 15) Install new refrigerator, stove and dishwasher.
- 16) Install 50 amp electrical line to stove.
- 17) Upgrade electricity to appliances.
- 18) Replace kitchen cabinets.
- 19) Repair bay window platform.
- 20) Install french doors into bedroom.
- 21) Install lights, fire alarm and ceiling fan in living room.
- 22) Clean chimney.
- 23) Repair fireplace hearth.
- 24) Design consulting on paint colors.
- 25) Paint apartment.
- 26) Install blinds on all windows.
- 27) Wallpaper living room.
- 28) Wallpaper top half of kitchen.
- 29) Wallpaper hallway.
- 30) Install grate or plexiglass over fireplace opening.
- 31) Install cable and phone lines.
- 32) Fix front porch storm door hinge and chain.
- 33) Informal lead inspection.
- 34) Replace rug.

Phone: 781-279-0789

Date: 12/12/2001

Job code: BOS

Job location: 44 Chestnut Street
Wakefield, MA 01880

Masterwork

PAINTING INC.

Interior Painting Quotation

December 18, 2001

Submitted to:
 Classic Restorations
 101 Walnut Street
 Watertown, MA 02472

Job Site:
 CRI - BOS
 unknown
 Wakefield, MA 01880

Room/Paint Area	Color	Paint Type	# Coats	Notes
Exterior				
Siding	match existing gray	Flat, Acrylic	3	- applies to new clapboard around bathroom window
Interior - hallway, kitchen, bedroom, living room				
Ceiling	decorator white	Flat, Acrylic	2	
Walls	off-white	Eggshell, Acrylic	2	
Trim	white or off-white	satin, Acrylic	2	
Doors	white or off-white	satin, Acrylic	3	
Windows	white or off-white	satin, Acrylic	3	
Cabinets	white or off-white	satin, Acrylic	3	- applies to the exterior surfaces of the cabinet in the closed
Wainscoting	white or off-white	satin, Acrylic	3	- applies to kitchen wainscot

Pricing:
 Painting as Specified

Price: \$7,875.00

Notes:

- the existing stained woodwork and front door will left as is, no work will be done
- all doors are to be stripped by Classic Restorations, Masterwork will prepare and paint them on site
- Masterwork Painting will strip the living room mantle on site
- no crown or picture molding is included in the work scope
- no work is to be done in the bathroom

Guarantee:
 Complete customer satisfaction is guaranteed. A three year guarantee is provided for materials and labor against any paint or application failures.

Schedule: February 2001

Terms:

Quotation valid for a period of 30 days.
 1/3 due upon job commencement, remainder due upon job completion.
 Any additional work would be billed on a time and materials basis at \$40.00/hr.
 Complimentary color samples will be provided, up to a total of 3 per color to be used. Additional samples are \$25/sample.

Quotation Approved:

Upon quotation acceptance, please sign and return one copy with deposit.

Richard J. O'Neil, President

Customer

Date: _____

CG 139

Page 1 of 1

15 Temple Terrace - Bedford, Massachusetts 01730 • 781-275-3050

Masterwork Painting, Inc.
15 Temple Terrace
BEDFORD, MA 01730

CHANGE ORDER

TO: Classic Restoration
Attn: Bill Hirsch

File Number: 0101

617-526-0691	2/28/02
805	
CHC-100-51 145-000	
CHC-100-51 145-000	
CHC-100-51 145-000	

We hereby agree to make the change(s) specified below:

Re-shingle + 2 French doors to be
stripped by Blown Trade Bros @ fixed cost 700

2 French doors and 1 French door to be
stripped by MWB on site on a
Time + Materials basis.

Transport of materials + doors are also Time + Materials.

NOTE: This Change Order becomes part of and is conformance with the existing contract.

WE AGREE hereby to make the change(s) specified above at this price:

DATE	PREVIOUS CONTRACT AMOUNT	REVISED CONTRACT TOTAL
2/15/02 Bill Hirsch	\$	\$

ACCEPTED: - The above prices and specifications of
the Change Order are satisfactory and are hereby
accepted. All work to be performed under same terms
and conditions as specified in original contract unless
otherwise indicated.

Date of acceptance: 2/28/02
Signature: William Hirsch

Inspector/Agency

PANTHER ENVIRONMENTAL, INC

 959 WASHINGTON STREET
 BRAINTREE, MA 02184
 1-617-849-7313
 1-800-332-5323

Page 2 of 6

LEAD INSPECTION
SURFACE ASSESSMENT FORM

Address of Inspection: 44 Chestnut St

Ap# 1

City Wakefield

ROOM

SIDE	LOCATION/SURFACE	LEAD	L	OWR	DLR SRF	SURV	SURST	INITIAL	X-CUT	COMMENTS	SUT for ENCAP?	DELEAD DATE	DELEAD METHOD
			ABT?	PREP?		SUR SUR	COND	TAPE	TEST				
	Up walls/Down walls	0.3											
	Baseboards/Chair rail	0.0											
C	Door	0.0											
	Door casing/Jamb	0.0 0.0	Y	Y									
D	Door	Neg											
	Door casing/Jamb	Neg Neg											
D	Door												
center	Door casing/Jamb	0.0 0.0	UV 2x4/s			Y	Y						
	Door												
	Door casing/Jamb												
	Window sill	0.0				Y	Y						
A	Win casing/Apron	0.0 0.0				Y	Y						
②	Win header/Stops	0.0 0.0				Y	Y						
	Win sash/Mullions	0.5				N							
	Ext sill/Part bead	0.5 0.5				Y	Y						
	Ext side sash	0.5				N							
	Window sill	0.0				Y	Y						
	Win casing/Apron	0.0 0.0				Y	Y						
B	Win header/Stops	0.0 0.0				Y	Y						
	Win sash/Mullions	0.5				N							
	Ext sill/Part bead	0.5 0.5				Y	Y						
	Ext side sash	0.5				N							
	Window sill												
	Win casing/Apron												
	Win header/Stops												
	Win sash/Mullions												
	Ext sill/Part bead												
	Ext side sash												
	Window sill												
	Win casing/Apron												
	Win header/Stops												
	Win sash/Mullions												
	Ext sill/Part bead												
	Ext side sash												
	Closet walls	0.0											
D	Cl interior door	Neg											
	Cl casing/Jamb	Neg Neg											
	Cl baseboards/Floor	0.0 0.0											
	Cl shelf/Supports	0.0											
	Refrigerator												
	Floor/Threshold	0.0 0.0											
	Ceiling/Closet ceiling	0.0 0.0											

④

LICENS# M2927

DATE 2/12/17

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Inspector/Agency

PANTHER ENVIRONMENTAL, INC

 968 WASHINGTON STREET
 BRAINTREE, MA 02184
 1-617-849-7313
 1-800-332-5323

Page 2 of 6

 LEAD INSPECTION
 SURFACE ASSESSMENT FORM

Address of Inspection: 44 Chestnut St Apt # 1

City: Woburn, MA

ROOM 2

SIDE	LOCATION / SURFACE	LEAD	L	DWR	DLR SRF	SUR/ SUBSUR	SUBST	INITIAL COND	X-CUT TAPE	TEST	COMMENTS	SUIT for ENCAP?	DELEAD DATE	DELEAD METHOD
	Up walls/Lower walls	0-3												
	Bassboards/Chair rail	10-0		Y	Y						2.5% - 5% LEAD			
A	Door	0-3												
	Door casing/Jamb	10-0 10-0		Y	X									
C	Door	0-0												
	Door casing/Jamb	10-0 10-0		Y	Y									
IL	Door	X												
	Door casing/Jamb	10-0 10-0		Y	Y									
DL	Door	X												
	Door casing/Jamb	10-0 10-0		Y	X									
	Window sill	10-0				Y	Y							
A	Win casing/Apron	10-0 10-0		Y	Y									
	Win header/Stops	10-0 10-0		Y	Y						At Stays: 2.5%			
	Win sash/Mullions	X				N						8/19	VA	
	Ext sill/Part bead	X		X	-Y	X						8/19	VA	
	Ext side sash	X				N						8/19	VA	
	Window sill	10-0				Y	Y							
B	Win casing/Apron	10-0 10-0		Y	Y									
X2	Win header/Stops	10-0 10-0		Y	Y						10-0 Stays: 2.5%			
	Win sash/Mullions	X				N						8/19	VA	
	Ext sill/Part bead	X		X	-Y	X						8/19	VA	
	Ext side sash	X				N						8/19	VA	
	Window sill	10-0				Y	Y							
C	Win casing/Apron	10-0 10-0		Y	Y									
	Win header/Stops	10-0 10-0		Y	Y						C Stays: 2.5%			
	Win sash/Mullions	X				N						8/19	VA	
	Ext sill/Part bead	X		X	-Y	X						8/19	VA	
	Ext side sash	X				N						8/19	VA	
	Window sill	10-0				Y	Y							
	Win casing/Apron													
	Win header/Stops													
	Win sash/Mullions													
	Ext sill/Part bead													
	Ext side sash													
	Closet walls													
	Cl interior door													
	Cl casing/Jamb													
	Cl baseboards/Floor	X												
	Cl shelf/Supports													
	Radiator													
	Floor/Threshold	0-0												
	Ceiling/Closet ceiling	0-0												
D	Marble	10-0		Y	X						D Number: 0-5			
	Lead paint - 10-0			Y	Y							8/19	DR/PS	

SIGNATURE

DATE 2/12/97

LICENSE # M2929

Inspector/Agency

PANTHER ENVIRONMENTAL, INC

969 WASHINGTON STREET
BRAINTREE, MA 02184
1-617-849-7313
1-800-332-5323.

Page 2 of 6

**LEAD INSPECTION
SURFACE ASSESSMENT FORM**

Address of Inspection: 44 Chestnut St

ADF 11

City Wakefield

BATHROOM

LICENSE # M1419

DATE 2/12/97

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Inspector/Agency

PANTHER ENVIRONMENTAL, INC

559 WASHINGTON STREET

BRAINTREE, MA 02184

1-617-849-7313

1-800-232-5323

Page 5 of 6

LEAD INSPECTION/
SURFACE ASSESSMENT FORM

Address of Inspection: 44 Chestnut St

Apt #

City Westfield

KITCHEN

SIDE	LOCATION/ SURFACE	LEAD	L OWR ABT?	DLR SRF PREP?	SUR/ SUBSUR	SUBST COND	INITIAL TAPE	X-CUT TEST	COMMENTS	SUIT for ENCAP?	DELEAD DATE	DELEAD METHOD
	Up walls/Low walls	0.9 neg										
	Baseboards/Chair rail	0.6 neg										
A	Door											
	Door casing/Jamb	0.7 0.5										
B	Door											
	Door casing/Jamb	0.3 0.4										
C	Door	neg										
	Door casing/Jamb	0.4 neg										
	Door											
	Door casing/Jamb											
D	Window sill	0.6										
	Win casing/Apron	0.3 0.0										
	Win header/Sills	0.3 0.3										
	Win sash/Mullions	0.6										
(X2)	Ext sill/Part bead	0.5 0.3	-	X	X					8/19	VA	
	Ext side sash	0.5								8/4	VA	
	Window sill											
	Win casing/Apron											
	Win header/Sills											
	Win sash/Mullions											
	Ext sill/Part bead											
	Ext side sash											
	Window sill											
	Win casing/Apron											
	Win header/Sills											
	Win sash/Mullions											
	Ext sill/Part bead											
	Ext side sash											
C	Up cab frame/Door	neg										
	Up cabinets/Walls	neg										
	Up cab shvs/Supp	neg neg										
C	Low cab frame/Door	neg										
	Low cabinets/Walls	neg										
	Low cab shvs/Supp	neg neg										
	Closet walls											
	Cl interior door											
	Cl casing/Jamb											
	Cl baseboards/Floor											
	Cl shelf/Supports											
	Shelves											
C	Drawers	neg										
	Refrigerator											
	Floor/Threshold	neg										
	Ceiling/Closet ceiling	neg										

LICENSE # HMMDATE 2/12/97

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Address of Inspection: 44 Chestnut St

Apt #

City: Wakefield

HALLWAY

SIDE	LOCATION / SURFACE	LEAD	L	OWR APT?	DLR SRF PREP?	SUR/ SUBSUR	SUBST COND	INITIAL TAPE	ECUT TEST	COMMENTS	SUIT FOR ENCAP?	DELEAD DATE	DELEAD METHOD
	Up walls/Low walls	0.7											
	Bassboards/Chair rail	0.4											
A	Door	1.89											
	Door casing/Jamb	never											
B	Door	X											
	Door casing/Jamb	0.5 0.4											
C	Door	X											
	Door casing/Jamb	0.3 0.4											
D	Door	0.6											
	Door casing/Jamb	0.6 0.3											
	Door												
	Door casing/Jamb												
	Window sill												
	Win casing/Apron												
	Win header/Stops												
	Win sash/Mutions												
	Ext sill/Part bead												
	Ext side sash												
	Window sill												
	Win casing/Apron												
	Win header/Stops												
	Win sash/Mutions												
	Ext sill/Part bead												
	Ext side sash												
	Window sill												
	Win casing/Apron												
	Win header/Stops												
	Win sash/Mutions												
	Ext sill/Part bead												
	Ext side sash												
	Closet walls												
	Cl interior door												
	Cleasing/Jamb												
	Cleasing/Floor												
	Cl shelf/Supports												
	Closet walls	11/17											
D	Cl interior door	0.1											
	Cl casing/Jamb	0.1 0.4											
	Cl baseboards/Floor	0.6 never											
	Cl shelf/Supports	0.2 0.1											
	Predator												
	Floor/Threshold	0.45 never											
	Ceiling/ceiling calling	0.45 never											

SIGNATURE

LICENSE # M24

DATE 2/12/97

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Street #	StreetName	Community	City	Unit	
44	Chestnut St	Wakefield	WAKEFIELD		View Detail
44	Chestnut St	Wakefield	WAKEFIELD	1	View Detail
44	Chestnut St	Wakefield	WAKEFIELD	2	View Detail

Lead Safe Homes

[New Search](#) [Search Results](#)

Search Criteria:

Town: WAKEFIELD
 StreetName : Chestnut St
 Street Number : 44

List of Details

Town	Address	Unit	Inspection Date	Inspection Type	Outcome	Inspected By	Inspector Licence#
WAKEFIELD	44 Chestnut St	1	2/12/1997	Comprehensive Initial Inspection	<u>Hazards Found</u>	Anthony Jakaitis	2929
WAKEFIELD	44 Chestnut St	1	6/24/2008	Contact CLPPP for Guidance	CLPPP Phone: 1-800-532-9571		
WAKEFIELD	44 Chestnut St	1	8/19/2008	Final Reinspection at UD Property	Failed	Anthony Jakaitis	2929
WAKEFIELD	44 Chestnut St	1	9/2/2008	Contact CLPPP for Guidance	Flagged for Compliance Evaluation	Warren Laskey	3757
WAKEFIELD	44 Chestnut St	1	9/2/2008	Issuance of Environmental Status Paperwork	Remaining Lead Hazards Present		

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Search Criteria:

Town: WAKEFIELD
StreetName : Chestnut St
Street Number : 44

List of Details

Town	Address	Unit	Inspection Date	Inspection Type	Outcome	Inspected By	Inspector Licence#
WAKEFIELD	44 Chestnut St	2	2/12/1997	Comprehensive Initial Inspection	<u>Hazards Found</u>	Anthony Jakaitis	2929

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Search Criteria:

Town: WAKEFIELD
StreetName: Chestnut St
Street Number: 44

List of Details

Town	Address	Unit	Inspection Date	Inspection Type	Outcome	Inspected By	Inspector Licence#
WAKEFIELD	44 Chestnut St		2/12/1997	Comprehensive Initial Inspection	<u>Hazards Found</u>	Anthony Jakaitis	2929

APPENDIX H



MASSACHUSETTS
GENERAL HOSPITAL

MGH CARDIAC ARRHYTHMIA SERVICE - YAWKEY
BUILDING
55 FRUIT ST
YAWKEY 5B
BOSTON MA 02114
Dept Phone #: 617-724-4500
Dept Fax #: 617-726-3306

2/10/2022

Richard D. Bostwick
[REDACTED] DOB 12/03

To Whom It May Concern:

Richard Bostwick is under our care for issues related to palpitations and arrhythmias which are in part stress-related. His condition is improving post procedure. It is my medical opinion that this interferes with the issue of court paperwork and his ability to make it to hearings and deadlines.

Sincerely,
William J. Hucker, MD, PhD
Cardiac Arrhythmia Service.

A handwritten signature in black ink, appearing to read 'William J. Hucker'.



Richard Bostwick <[REDACTED]@gmail.com>

*RDB***MRI**

1 message

Cunnane, Mary Beth <MaryBeth_Cunnane@meei.harvard.edu>
To: "rdbostwick@gmail.com" <rdbostwick@gmail.com>
Cc: "Messinger, Jane" <Jane_Messinger@meei.harvard.edu>

Mon, Sep 16, 2019 at 10:47 AM

Dear Mr. Bostwick,

As we discussed in our phone conversation this morning, having reviewed your MRI here at MEEI, I believe that you have old cerebellar infarcts on the right. I do not believe this finding to be artifact. We do not see any evidence of new stroke and I am very relieved to see that there was no new stroke on your MGH MRI scan either.

Thank you for entrusting us with your imaging care.

Mary Beth Cunnane MD

Interim Chief

Department of Radiology

Massachusetts Eye and Ear Infirmary

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RDR

Name: Richard D Bostwick | DOB: [REDACTED] | MRN: [REDACTED] | PCP: Carol Margaret Ehrlich, MD

MRI BRAIN - Details

Order Information

Ordering Provider
FORTIN, ELIZABETH

Result Date
Feb 26, 2019

Study Result

Narrative & Impression

----- Report -----

Reason for Exam: History of diplopia.

MRI BRAIN WITH WITHOUT CONTRAST AND MRI FACE (ORBITS) WITH AND WITHOUT CONTRAST.

TECHNIQUE: MRI brain and face (orbit) with and without contrast.

FINDINGS: The caliber of the ventricular system is within normal limits. Multiple small foci of T2 prolongation are present within the periventricular and subcortical supratentorial white matter, nonspecific, but likely related to mild microangiopathic disease. There are remote-appearing right cerebellar small vessel infarcts. No abnormal decreased diffusivity is identified to suggest recent infarct. Major intracranial flow-voids are present. No mass effect or midline shift. Cerebellar tonsils terminate above the foramen magnum. Corpus callosum and sella turcica are unremarkable. No nodular parenchymal, leptomeningeal, or ependymal enhancement is identified.

The optic nerves are normal in caliber and signal. No abnormal enhancement along the optic nerves identified. The extraocular muscles are symmetric. The cavernous sinuses enhance symmetrically. There is no abnormal enhancement along the course of the VI, III, or IV cranial nerves.

IMPRESSION:

----- Impression -----

NO INTRAORBITAL MASS IDENTIFIED. NO ABNORMAL ENHANCEMENT WITHIN THE CAVERNOUS SINUSES OR ALONG THE COURSE OF THE III, IV, OR VI CRANIAL NERVES TO ACCOUNT FOR DIPLOPIA. MILD MICROANGIOPATHIC DISEASE AND REMOTE-APPEARING RIGHT CEREBELLAR INFARCTS.

Read by:

Read
REINSHAGEN, KATHERINE L

Date
Feb 26, 2019 12:00 AM

Signed by

Signed
REINSHAGEN, KATHERINE L

Date/Time
2/26/2019 2:09 PM

MyChart® licensed from Epic Systems Corporation © 1999 - 2022

Name: Richard D Bostwick | DOB: [REDACTED] | MRN: [REDACTED] | PCP: Not Required Pcp *RDB*

Patch Monitor - Details

MASSACHUSETTS
GENERAL HOSPITALMRN: [REDACTED] *RDB*
Bostwick, Richard D
Date of Birth: [REDACTED]
[REDACTED] y.o. MaleMGH Holter Lab
55 Fruit St.
Yawkey 5B
Boston MA 02114
617-726-7737

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Result Report

Patient Name: Bostwick, Richard D	Ordering Prov: Abhishek Maan	Procedure(s) Performed: PATCH MONITOR
Patient Class: Outpatient	Primary Care Physician: Not Required Pcp	Exam Date and Time: 10/08/2019 10:20 AM
Technologist:	Diagnosis: Palpitations [R00.2 (ICD-10-CM)]	Accession #: E13634551
Performing Physician: None Selected	Reason For Exam: Palpitations	Result Status: Final

Interpretation Summary

Addendum by William J Hucker, MD, PhD on Fri Nov 8, 2019 2:37 PM
MGH EP SERVICE HOLTER LABORATORY PATCH MONITOR FINAL REPORT

Case Identification

Patient Name: BOSTWICK, RICHARD MRN: [REDACTED] *RDB*
Case Date: 10-08-2019 Referring MD: ABHISHEK MAAN
Reading Attending MD: Hucker, William J., M.D., Ph.D.

Fellow MD:Maan, Abhishek, MD

Indication(s):

Palpitations

Procedure(s):

Zio patch recording (including connection, recording and disconnection)
Zio patch review and interpretation

Conclusions:

1. Ziopatch was indicated for the work up of Palpitations.
2. Patient had a min HR of 38 bpm, max HR of 218 bpm, and avg HR of 71 bpm. Predominant underlying rhythm was Sinus Rhythm.
3. A single run of wide complex tachycardia occurred lasting 8 beats with a max rate of 176 bpm (avg 153 bpm).
4. A total of 10944 episodes of narrow complex tachycardias occurred, the run with the fastest interval lasting 23.0 secs with a max rate of 218 bpm, the longest lasting 1 min 35 secs with an avg rate of 107 bpm. Some episodes of Supraventricular Tachycardia may be possible Atrial Tachycardia. Some episodes of Supraventricular Tachycardia conducted with possible aberrancy.

These episodes of SVT seem to be most consistent with Atrial tachycardia.

5. Atrial Flutter occurred (<1% burden), ranging from 110-190 bpm (avg of 144 bpm), the longest lasting 33 mins 37 secs with an avg rate of 143 bpm.

6. Idioventricular Rhythm was present.

7. Supraventricular Tachycardia was detected within +/- 45 seconds of symptomatic patient event(s).

8. Isolated SVEs were occasional (1.9%, 27226), SVE Couplets were rare (<1.0%, 2468), and SVE Triplets were rare (<1.0%, 338). Isolated VEs were rare (<1.0%, 8337), VE Couplets were rare (<1.0%, 97), and VE Triplets were rare (<1.0%, 1). Ventricular Bigeminy was present.

Hucker, William J., M.D., Ph.D. personally reviewed the data relevant to the interpretation of this study and agrees with the findings.

This report has been electronically signed by Hucker William

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Finalized by William J Hucker, MD, PhD on Fri Nov 8, 2019 2:20 PM

MGH EP SERVICE HOLTER LABORATORY PATCH MONITOR FINAL REPORT

Case Identification

Patient Name: BOSTWICK, RICHARD MRN: 0770 *RDH*
Case Date: 10-08-2019 Referring MD: ABHISHEK MAAN
Reading Attending MD: Hucker, William J., M.D., Ph.D.
Fellow MD: Maan, Abhishek, MD

Indication(s):

Palpitations

Procedure(s):

Zio patch recording (including connection, recording and disconnection)
Zio patch review and interpretation

Conclusions:

1. Ziopatch was indicated for the work up of Palpitations.
2. Patient had a min HR of 38 bpm, max HR of 218 bpm, and avg HR of 71 bpm. Predominant underlying rhythm was Sinus Rhythm.
3. A single run of wide complex tachycardia occurred lasting 8 beats with a max rate of 176 bpm (avg 153 bpm).
4. A total of 10944 episodes of narrow complex tachycardias occurred, the run with the fastest interval lasting 23.0 secs with a max rate of 218 bpm, the longest lasting 1 min 35 secs with an avg rate of 107 bpm. Some episodes of Supraventricular Tachycardia may be possible Atrial Tachycardia. Some episodes of Supraventricular Tachycardia conducted with possible aberrancy.

These episodes of SVT seem to be most consistent with Atrial tachycardia.

5. Atrial Flutter occurred (<1% burden), ranging from 110-190 bpm (avg of 144 bpm), the longest lasting 33 mins 37 secs with an avg rate of 143 bpm.

6. Idioventricular Rhythm was present.

7. Supraventricular Tachycardia was detected within +/- 45 seconds of symptomatic patient event(s).

8. Isolated SVEs were occasional (1.9%, 27226), SVE Couplets were rare (<1.0%, 2468), and SVE Triplets were rare (<1.0%, 338). Isolated VEs were rare (<1.0%, 8337), VE Couplets were rare (<1.0%, 97), and VE Triplets were rare (<1.0%, 1). Ventricular Bigeminy was present.

Hucker, William J., M.D., Ph.D. personally reviewed the data relevant to the interpretation of this study and agrees with the findings.

This report has been electronically signed by Hucker William

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Signed

Electronically signed by William J Hucker, MD, PhD on 11/8/19 at 1420 EST

Electronically addended by William J Hucker, MD, PhD on 11/8/19 at 1437 EST

Reading Physicians

Physician	Role
William J Hucker, MD, PhD	

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Name: Richard D Bostwick | DOB: [REDACTED] | MRN: [REDACTED] | PCP: Carol Margaret Ehrlich, MD
RDDB

Visit Details

ABLATION, ATRIAL FIBRILLATION PERSISTENT with William J Hucker

Expected on Wednesday
January 12, 2022 in the
AM EST

[Add to calendar](#)

MGH EP Pacer Lab
55 Fruit St
Boston MA 02114
617-726-5036

[Get directions](#)

This visit cannot be canceled online. To cancel, please call your doctor or coordinator.

Procedures scheduled during your stay

Wednesday January 12, 2022 AM EST

ABLATION, ATRIAL FIBRILLATION PERSISTENT

Performed by William J Hucker

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Letter by Shauna Hines McGrath, NP on 4/12/2022**MASSACHUSETTS
GENERAL HOSPITAL**

MGH CARDIAC ARRHYTHMIA SERVICE - YAWKEY
BUILDING
55 FRUIT ST
YAWKEY 5B
BOSTON MA 02114
Dept Phone #: 617-724-4500
Dept Fax #: 617-726-3306

April 12, 2022

Richard D. Bostwick

Patient: **Richard D Bostwick**
MR Number: [REDACTED]
Date of Birth: [REDACTED]
Date of Visit: **4/12/2022**

To Whom it May Concern:

Richard Bostwick is under our care for issues related to palpitations and arrhythmias which are in part stress-related. His condition is improving post procedure (1/12/22). It is my medical opinion that this interferes with the issue of court paperwork and his ability to make it to hearings and deadlines.

Sincerely,

A handwritten signature in black ink, appearing to read "Shauna Hines McGrath".

Shauna Hines McGrath, NP
William Hucker, MD, PhD
Cardiac Arrhythmia Service



MASSACHUSETTS
GENERAL HOSPITAL

MGH Internal Medicine Associates
15 PARKMAN ST
WANG 608
BOSTON MA 02114
Dept Phone #: 617-726-2370
Dept Fax #: 617-726-4495

May 6, 2022

Richard D. Bostwick
Po Box 1959
Wakefield MA 01880

Patient: **Richard D Bostwick**
MR Number: [REDACTED] *RDR*
Date of Birth: [REDACTED]
Date of Visit: 5/6/2022

To Whom it May Concern:

This letter is to verify that Richard Bostwick is currently under my medical care for multiple conditions, including anxiety, emotional distress, abdominal pain, palpitations, atrial fibrillation, among others. It is my medical opinion that these conditions have impaired his ability to concentrate and reason and that may interfere with the issue of court paperwork and his ability to make it to hearings and deadlines.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cher X Huang'.

Cher X Huang, MD

RDH
Name: Richard D Bostwick | DOB: [REDACTED] | MRN: [REDACTED] | PCP: Carol Margaret Ehrlich, MD

Patch Monitor up to 15 days - Details



MASSACHUSETTS
GENERAL HOSPITAL

MGH Holter Lab
55 Fruit St
Yawkey 5B
Boston MA 02114
617-726-7737

RDH
MRN: [REDACTED]
Bostwick, Richard D
Date of Birth: [REDACTED]
[REDACTED] y.o. Male

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Result Report

Patient Name: Bostwick, Richard D	Ordering Prov: Shauna Hines McGrath	Procedure(s) Performed: Patch Monitor up to 15 days
Patient Class: Outpatient	Primary Care Physician: Carol Margaret Ehrlich	Exam Date and Time: 05/11/2022 12:06 PM
Technologist: Anna Rose Angelo, LMT	Diagnosis: Persistent atrial fibrillation [I48.19 (ICD-10-CM)]	Accession #: E26435797
Performing Physician: None Selected	Reason For Exam: s/p ablation	Result Status: <u>Final</u>

Interpretation Summary

MGH EP SERVICE HOLTER LABORATORY PATCH MONITOR FINAL REPORT

Case Identification

RDH

Patient Name: BOSTWICK, RICHARD MRN: [REDACTED]
Case Date: 04-13-2022 Referring MD: SHAUNA HINES MCGRATH
Reading Attending MD: Lubitz Steven A, MD, Mph
Fellow/Cardiac Rhythm Monitoring Technician: Brianna Frangos

Indication(s):

Persistent atrial fibrillation

Procedure(s):

Patch recording for >7 to 15 days (including connection, recording and disconnection)

Patch monitor review and interpretation for >7 to 15 days

Conclusions:

Patient had a min HR of 37 bpm, max HR of 240 bpm, and avg HR of 64 bpm. Predominant underlying rhythm was Sinus Rhythm. 2 Ventricular Tachycardia runs occurred, the run with the fastest interval lasting 9 beats with a max rate of 171 bpm (avg 164 bpm); the run with the fastest interval was also the longest. Episode of Ventricular Tachycardia may be Supraventricular Tachycardia with possible aberrancy. 13391 Supraventricular Tachycardia runs occurred, the run with the fastest interval lasting 15 beats with a max rate of 240 bpm, the longest lasting 53.2 secs with an avg rate of 122 bpm. Supraventricular Tachycardia was detected within +/- 45 seconds of symptomatic patient event(s). Isolated SVEs were occasional (2.2%, 29376), SVE Couplets were occasional (1.2%, 8026), and SVE Triplets were occasional (1.3%, 5653). Isolated VEs were rare (<1.0%, 5890), VE Couplets were rare (<1.0%, 324), and VE Triplets were rare (<1.0%, 64). Ventricular Bigeminy was present.

Patch monitoring started: 4/13/2022 3:24 PM and ended: 4/27/2022 3:24 PM

Lubitz Steven A, MD, MPH personally reviewed the data relevant to the interpretation of this study and agrees with the findings.

This report has been electronically signed by Lubitz Steven

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Signed

Electronically signed by Steven A Lubitz, MD, MPH on 5/14/22 at 1047 EDT

Reading Physicians

Physician	Role
Aneesh C Bapat, MD	Cardiology
Steven A Lubitz, MD, MPH	

**Psychiatric Associates
of Malden**

578 Main Street, Malden, MA 02148
(781) 397-6789
FAX (781) 397-2597

Thomas C. Bond, M.D.
Pierre Mayer, M.D.

June 13, 2022

To whom it may concern,

This letter is to verify that Richard Bostwick (DOB 4-12) is currently under my medical care for treatment of anxiety and emotional distress. Given that Mr. Bostwick is involved in title/property encumbrances and foreclosure litigation, he also struggles with physical symptoms of diplopia, vertigo, syncope, palpitations, panic attacks, and stomach distress, which have hampered his preparation of documents and hearings for the court. In addition, his depression and anxiety have impaired his ability to concentrate and reason.

In my opinion, granting him additional time to prepare documents and hearings for the court would be both beneficial and humane.

Signed



Thomas C. Bond, M.D.

APPENDIX I

42 U.S. Code § 12101 - Findings and purpose

U.S. Code Notes

(a) FINDINGS

The Congress finds that—

- (1)** physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;
- (2)** historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3)** discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4)** unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5)** individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary

qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, §2, July 26, 1990, 104 Stat. 328; Pub. L. 110-325, §3, Sept. 25, 2008, 122 Stat. 3554.)

42 U.S. Code § 12102 - Definition of disability

U.S. Code Notes

As used in this chapter:

(1) DISABILITY

The term "disability" means, with respect to an individual—

- (A)** a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B)** a record of such an impairment; or
- (C)** being regarded as having such an impairment (as described in paragraph (3)).

(2) MAJOR LIFE ACTIVITIES

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) REGARDED AS HAVING SUCH AN IMPAIRMENT

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

(Pub. L. 101-336, § 3, July 26, 1990, 104 Stat. 329; Pub. L. 110-325, § 4(a), Sept. 25, 2008, 122 Stat. 3555.)

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42 U.S. Code § 12103 - Additional definitions

U.S. Code Notes

As used in this chapter:

(1) AUXILIARY AIDS AND SERVICES

The term "auxiliary aids and services" includes—

- (A)** qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (B)** qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (C)** acquisition or modification of equipment or devices; and
- (D)** other similar services and actions.

(2) STATE

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

(Pub. L. 101-336, § 4, as added Pub. L. 110-325, § 4(b), Sept. 25, 2008, 122 Stat. 3556.)

LII > U.S. Code > Title 42 > CHAPTER 126 > SUBCHAPTER II > Part A > **§ 12131**

42 U.S. Code § 12131 - Definitions

U.S. Code Notes

As used in this subchapter:

(1) PUBLIC ENTITY

The term "public entity" means—

- (A)** any State or local government;
- (B)** any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C)** the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4)^[1] of title 49).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101-336, title II, § 201, July 26, 1990, 104 Stat. 337.)

42 U.S. Code § 12132. Discrimination

U.S. Code Notes

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101-336, title II, § 202, July 26, 1990, 104 Stat. 337.)

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42 U.S. Code § 12133. Enforcement

U.S. Code Notes

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101-336, title II, § 203, July 26, 1990, 104 Stat. 337.)

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42 U.S. Code § 12134. Regulations

U.S. Code Notes

(a) IN GENERAL

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) RELATIONSHIP TO OTHER REGULATIONS

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) STANDARDS

Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101-336, title II, § 204, July 26, 1990, 104 Stat. 337.)

LII > U.S. Code > Title 42 > CHAPTER 126 > SUBCHAPTER IV > **§ 12201**

42 U.S. Code § 12201 - Construction

U.S. Code Notes

(a) IN GENERAL

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) RELATIONSHIP TO OTHER LAWS

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.

(c) INSURANCE

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks,

classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter^[1] I and III.

(d) ACCOMMODATIONS AND SERVICES

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) FUNDAMENTAL ALTERATION

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) CLAIMS OF NO DISABILITY

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

(Pub. L. 101-336, title V, § 501, July 26, 1990, 104 Stat. 369; Pub. L. 110-325, § 6(a)(1), Sept. 25, 2008, 122 Stat. 3557.)

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LII > U.S. Code > Title 42 > CHAPTER 126 > SUBCHAPTER IV > **§ 12202**

42 U.S. Code § 12202 - State immunity

[U.S. Code](#) [Notes](#)

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in ^[1] Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101-336, title V, § 502, July 26, 1990, 104 Stat. 370.)

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42 U.S. Code § 12203. Prohibition against retaliation and coercion

U.S. Code Notes

(a) RETALIATION

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) INTERFERENCE, COERCION, OR INTIMIDATION

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) REMEDIES AND PROCEDURES

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to subchapter I, subchapter II and subchapter III, respectively.

(Pub. L. 101-336, title V, § 503, July 26, 1990, 104 Stat. 370.)

42 U.S. Code § 12213. Severability

[U.S. Code](#) [Notes](#)

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

(Pub. L. 101-336, title V, § 515, formerly § 514, July 26, 1990, 104 Stat. 378; renumbered § 515, Pub. L. 110-325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

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Office of the Assistant Secretary for Administration & Management

Section 504, Rehabilitation Act of 1973

Section 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any proposed regulations shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date of which such regulation is so submitted to such committees. See also 29 CFR Part 32 and 29 CFR Part 37.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of --

- (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
- (B) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system;
- (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --
 - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2) or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services is available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections related to employment.

Section 794a. Remedies and attorney fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706 (k) [42 U.S.C. 2000e-5(f) through k] shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternative therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

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