

Bostwick

Application No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

Richard D. Bostwick,
Pro Se Petitioner;

vs.

44 Chestnut Street, Wakefield, Mass. IN REM et al;
Respondent(s).

On Application For Extension Of Time

For Sixty (60) days from 21 April 2022 to and
including 20 June 2022 TO File Petition For Writ Of
Certiorari To Supreme Judicial Court (SJC) For The
Commonwealth Of Massachusetts (Case No.: SJC-13061) AND
For SJC Denied Discretionary Review Issues, TO Appeals
Court For The Commonwealth of Massachusetts (Case No.:
2019-P-0589)

UNDER

ADA Reasonable Accommodation Discrimination (42 U.S.C.
§ 12132) and Retaliation and Coercion (42 U.S.C. §§
12202, 12203)

Richard D. Bostwick
44 Chestnut Street
P.O. Box 1959
Wakefield, MA 01880-5959
781-279-0789 (Land Line)

Date Filed By Post Office Mail: April 10, 2022

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Application For Extension Of Time For Sixty (60) days

from 21 April 2022 to and including 20 June 2022 TO

File Petition For Writ Of Certiorari

- 1.0 Introduction and Extension of Time Requested**
 - 1.1 To the Honorable Justice Stephen G. Breyer,
Associate Justice of the Supreme Court of the United
States and Circuit Justice for the First Circuit.
 - 1.2 The Pro Se, Disabled, Indigent, Plaintiff-
Appellant Richard D. Bostwick Requests of this Court
an Extension of Time of Sixty (60) Days to File his
Petition for Writ of Certiorari. **The Requested**

Extension of Sixty (60) days is from 21 April 2022 to
and including 20 June 2022 by which Bostwick shall
File his Petition For A Writ Of Certiorari.

1.2 Bostwick incorporates herein the above
Caption; "On Application For Extension Of Time For
Sixty (60) days from 21 April 2022 to and including 20
June 2022 TO File Petition For Writ Of Certiorari To
Supreme Judicial Court (SJC) For The Commonwealth Of
Massachusetts (Case No.: SJC-13061) AND For SJC Denied
Discretionary Review Issues, TO Appeals Court For The
Commonwealth of Massachusetts (Case No.: 2019-P-0589)
UNDER ADA Reasonable Accommodation Discrimination (42
U.S.C. § 12132) and Retaliation and Coercion (42
U.S.C. §§ 12202, 12203)."

1.3 As stated in the Caption and For SJC Denied
Discretionary Issues and CONCERNING Case No.: SJC-
13061 and Case No.: 2019-P-0589; Bostwick Requests
this U.S. Supreme Court to Review ALL Supreme Judicial
Court (SJC) and Appeals Decisions, which are
identified in Exhibits 2, 3, 4 and 5. Bostwick's
Requested Extension of Time applies to Both the SJC
and Appeals Court Decisions. Please Document the Fact
in your Letter that the Extention of Time Appies to
both the SJC and Appeals Court Decisions and Notify

both the SJC and Appeals Court of the U.S. Supreme Court Decision concerning Bostwick's Request for an Extension of Time.

1.4 The Sections below Argue for Bostwick's Requested Extension of Time.

2.0 Index To Exhibits

2.1 Exhibit 1 provides the latest Evidence of Bostwick's Physical and Emotional ADA, Title 42 c. 126 U.S.C. §§ 12101 Disabilities. Given Bostwick's Heart Surgery, the Massachusetts General Doctors requested a Stay of All Cases until at least 01 February 2022. On 10 February 2022, Bostwick's Heart problems continued. However, Exhibit 4 illustrates that Bostwick's Motion For Reconsideration was Denied on 21 January 2022. Consequently, the Supreme Court 90 day Clock started on 21 January 2022 and NOT the Massachusetts General Requested time of well after 10 February 2022. Exhibit 1 also illustrates Bostwick's on-going ADA Emotional Disabilities with Depression and an inability to concentrate.

2.2 Exhibit 2 provides the Docket for the Appeal Court Case No.: 2019-P-0589. In addition, Exhibit 2 presents the Appeals Court Decision for Richard D.

Bostwick vs. 44 Chestnut Street, Wakefield, Mass. & Others (19-P-589).

2.3 Exhibit 3 provides the 23 November 2021, FIRST Decision of the Supreme Judicial Court (SJC-13061).

2.4 In Exhibit 4, the Docket states that Bostwick presented his Timely Motion for Reconsideration with Court Leave on 12/06/2021 Item #12. Bostwick's Motion for Reconsideration was Denied on 21 January 2022 as evidenced by the SJC Court's Notice of Docket Entry (See Email) and the Docket Item #12 addition of the Denial of Bostwick's Motion on 1/21/2022. Consequently, the Supreme Court Clock of 90 days began on 21 January 2022, without consideration for Bostwick's Requested Physical and Emotional ADA, Title 42 c. 126 U.S.C. §§ 12101 Disabilities.

2.5 After receiving Bostwick's Motion for Reconsideration, Exhibit 5 illustrates the SJC Strategy of completely changing its FIRST, 23 November 2022 Decision and replacing it with a completely different Revised Decision on 21 January 2022. In Note 4, the SJC Abstains from considering the Appeals Court ADA absolute judicial immunity. In Note 5, the SJC Abstains from the other Claims against the Appeals

Court. Consequently, Bostwick Requests U.S. Supreme Court Review of Appeals Court Exhibit 2 and SJC Exhibits 3, 4, and 5.

**3.0 GOOD CAUSE: ADA Requested Reasonable
Accommodation Time Extension (See Exhibit 1)**

3.1 Under the Americans with Disabilities Act (ADA) (Title 42 c. 126 U.S.C. §§ 12101) generally and under Title 42 U.S.C. § 12102, 12131, 12132, 12133 specifically and given Bostwick's Disabilities, Bostwick PROVIDES NOTICE ONLY and asks this Court for a "Reasonable Accommodation" GIVEN Bostwick's Heart Surgery, Heart Recovery, Brainstem Stroke and Emotional Disabilities (Bostwick has Difficulty Concentrating, Reasoning, Reading, Emotional Distress, Depression, Anxiety, etc.) The Accommodation Requested is an Extension of Sixty (60) days from 21 April 2022 to and including 20 June 2022 by which Bostwick shall File his Petition For A Writ Of Certiorari. (See Exhibit 1)

3.2 Specifically, Bostwick Requests an ADA Reasonable Accommodation Time Extension given the following Issue of Bostwick's Court Caused Heart Arrhythmia. Given Bostwick's Heart Surgery, the Massachusetts General Doctors requested a Stay of All

Cases until at least 01 February 2022. On 10 February 2022, Bostwick's Heart problems continued. However, Exhibit 4 illustrates that Bostwick's Motion For Reconsideration was Denied on 21 January 2022. Consequently, the Supreme Court 90 day Clock started on 21 January 2022 and NOT the Massachusetts General Requested time of well after 10 February 2022. (See Exhibit 1)

3.3 Another reason for the Extension of Time is that Pro Se, Disabled, Indigent Bostwick is Physically and Emotionally Distressed by the Bank's FORECLOSURE Litigation and the associated Work Load concerning Bostwick's Multi-Family Residence.

4.0 Application for Extension of Time is Timely

4.1 Bostwick's Motion for Reconsideration was Denied on 21 January 2022. Under Rule 30.1, the day of the event is NOT included. Consequently, the initial 90 day time for Bostwick's Petition For Writ Of Certiorari expires on 21 April 2022. Bostwick Requests a Sixty (60) day extension to and including 20 June 2022. This Application for Extension of Time has been Filed by Post Office, Certified Priority Mail with return Receipt on 10 April 2022, which is more than Ten (10) days before the 21 April 2022 Date.

5.0 Jurisdiction

5.1 Copies of the Appeals Court Decision, the FIRST Supreme Judicial Court (SJC) Decision, The Denial of Bostwick's Motion for Reconsideration and the SECOND SJC Decision are provided in Exhibits 2, 3, 4 and 5. Given that the Cases are from the State Courts, the Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

6.0 Constitutional and Statutory Provisions

Involved

6.1 In general the Constitutional and Statutory Provisions Involved are identified in the Appeals Court Decision (Exhibit 2), the FIRST Supreme Judicial Court (SJC) Decision (Exhibit 3), The Denial of Bostwick's Motion for Reconsideration (Exhibit 4) and the SECOND SJC Decision (Exhibit 5).

6.2 Specifically, the Constitutional and Statutory Provisions and VIOLATIONS Involved are as follows: (1) ADA Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) is a major Issue; (2) "Supremacy Clause" means U.S. Constitution, Article VI, [2]. (3) "Judges Bound by Constitution" means U.S. Constitution, Article VI, [3]. (4) "Right

to Petition" means U.S. Constitution, Amendment I. (5)

"Due Process" means U.S. Constitution, Amendment XIV.

(6) "Regulatory Taking" means U.S. Constitution,

Amendment V. (7) "Bill of Attainder" means U.S.

Constitution, Article I, Section 10. (8) "No Excessive

Fines" means U.S. Constitution, Amendment VIII. (9)

"Equal Protection" means U.S. Constitution, Amendment

XIV. (10) "Title 11 §§ 105, 106, 362" means U.S.

Bankruptcy Code Title 11 §§ 105, 106, 362; namely,

Title 11 § 105, Power of Court; Title 11 § 106, Waiver

of Sovereign Immunity; Title § 362, Automatic Stay.

(11) "ADA" means the Americans with Disabilities Act

(Title 42 c. 126 U.S.C. §§ 12101) generally and

Reasonable Accommodation Discrimination (42 U.S.C. §

12132) and Retaliation and Coercion (42 U.S.C. §§

12202, 12203) specifically.

6.3 Bostwick's Cases present important Questions under the Constitution of the United States that were determined adversely to the Petitioner, Richard D. Bostwick, by the Courts Below.

7.0 Requested U.S. Supreme Court Review of ALL Supreme Judicial Court (SJC) and Appeals Court Decisions (Exhibits 2, 3, 4 and 5)

7.1 Bostwick's Application states the following:

"On Application For Extension Of Time For Sixty (60) days from 21 April 2022 to and including 20 June 2022 TO File Petition For Writ Of Certiorari To Supreme Judicial Court (SJC) For The Commonwealth Of Massachusetts AND For SJC Denied Discretionary Review Issues, TO Appeals Court For The Commonwealth of Massachusetts..."

7.2 Bostwick Requests this U.S. Supreme Court to Review ALL Supreme Judicial Court (SJC) and Appeals Decisions, which are identified in Exhibits 2, 3, 4 and 5.

7.2.1 As stated in the Caption and For SJC Denied Discretionary Issues and CONCERNING Case No.: SJC-13061 and Case No.: 2019-P-0589; Bostwick Requests this U.S. Supreme Court to Review ALL Supreme Judicial Court (SJC) and Appeals Decisions, which are identified in Exhibits 2, 3, 4 and 5. Bostwick's Requested Extension of Time applies to Both the SJC and Appeals Court Decisions. Please Document the Fact in your Letter that the Extention of Time Appies to both the SJC and Appeals Court Decisions and Notify both the SJC and Appeals Court of the U.S. Supreme

Court Decision concerning Bostwick's Request for an
Extension of Time.

**8.0 List of Parties and SJC / Appeals Court
Addresses**

**8.1 Supreme Judicial Court Address (Case No.:
SJC-13061)**

SJC Clerk's Office

Supreme Judicial Court for the

Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Sq., Suite 1400

Boston, MA 02108

617-557-1189

**8.2 Appeals Court Address (Case No.: 2019-P-
0589)**

Appeals Court Clerk's Office

Appeals Court for the

Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Sq., Suite 1200

Boston, MA 02108

617-725-8106

8.3 List of Parties

8.3.1 As identified in the Docket in Exhibits 2 and 4, the Parties with an interest in the U.S. Supreme Court Appeal are as follows:

RICHARD D. BOSTWICK and RICHARD D. BOSTWICK as a CLASS OF ONE; Plaintiff(s)

(1) 44 CHESTNUT STREET, WAKEFIELD, MASS. (In Rem); (2) UNKNOWN FUTURE PROPERTY OWNERS of Defendant 44 Chestnut Street, Wakefield, Mass.; (3) UNKNOWN FUTURE TITLE INSURANCE COMPANIES providing Title Insurance for Defendant 44 Chestnut Street; (4) SANTANDER BANK, N.A. previously known as (p.k.a.) Sovereign Bank N.A., Sovereign Bank; Santander Holdings USA, Inc., Sovereign Bancorp, Inc.; (5) FEDERAL NATIONAL MORTGAGE ASSOCIATION also known as (a/k/a) FANNIE MAE; (6) ORLANS MORAN PLLC; (7) LEONARD J. SIMS a/k/a LEONARD JOSEPH SIMS, LEONARD J. SIMS CO., GENERAL CONTRACTORS, and LEONARD J. SIMS CUSTOM CARPENTRY; (8) UNKNOWN THE CLASSIC GROUP, INC, p.k.a. UNKNOWN CLASSIC RESTORATIONS, INC.; (9) KYLE BARNARD; (10) PHILIP BATES; (11) RICHARD F. GANTT; (12) UNKNOWN OFFICERS and DIRECTORS of The Classic Group, Inc. p.k.a. Classic Restorations, Inc.; (13) UNKNOWN INSURANCE POLICY ENTITIES/ COMPANIES insuring The Classic Group, Inc. p.k.a. Classic Restorations, Inc. and their

Officers and Directors; (14) THECOMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES, DEPARTMENT OF PUBLIC HEALTH; (15) PAUL N. HUNTER, the Title 42 U.S.C.A § 1983 Person; (16) PAUL N. HUNTER, in Official Capacity as Director Childhood Lead Poisoning Prevention Program, The Department of Public Health, The Commonwealth of Massachusetts; (17) DONNA LEVIN, the Title 42 U.S.C.A. § 1983 Person; (18) WARREN M. LASKEY, the Title 42 U.S.C.A. § 1983 Person; (19) MASSACHUSETTS APPEALS COURT; (20) MIDDLESEX SUPERIOR COURT, MASSACHUSETTS EXECUTIVE OFFICE OF THE TRIAL COURT; Defendant(s).

8.4 List of Counsel

8.1 For a full Listing of Counsel and their Telephone Numbers, please refer to the Certificate Of Service.

8.2 The Counsel are as follows: For Orlans Moran PLLC: Orlans PC; For Bates and Barnard: Sassoon & Cymrot, LLP; For Commonwealth Defendants: Office of the Attorney General; For Leonard J. Sims et al: McDonough, Hacking & Lavoie, LLC; For Santander Bank, N.A. and Federal National Mortgage Association: Laredo & Smith, LLP and For Alex Mattera: Pierce Atwood LLP.

9.0 Conclusion

Bostwick

9.1 Wherefore the Petitioner, Richard D.
Bostwick, respectfully requests that an **Order be**
entered to BOTH the Massachusetts (1) Supreme Judicial
Court (SJC) (Case No.: SJC-13061) and (2) Appeals
Court (Case No.: 2019-P-0589) extending Bostwick's
time to Petition for Certiorari to and including **20**
June 2022.

Respectfully Submitted By Pro Se, Disabled, Indigent:

Richard D. Bostwick
Richard D. Bostwick
44 Chestnut Street
P.O. Box 1959
Wakefield, MA 01880-5959
781-279-0789 (Land Line Only)

Date Filed By Post Office Mail: April 10, 2022
See Certificate of Service.

EXHIBIT 1

RDB

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

RDB

Letter Details



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

1/9/2022

Richard D Bostwick

[REDACTED] *DOB: [REDACTED] RDB*

To Whom It May Concern:

Richard Bostwick is under our care for issues related to palpitations and arrhythmias which are in part stress-related. It is my medical opinion that this interferes with the issue of court paperwork and his ability to make it to hearings and deadlines. Please excuse him from court appearances from today until February 1, 2022. Please feel free to contact our office with any questions or concerns.

Sincerely,

Colleen Elizabeth O'Connor, PA-C on behalf of Dr. William Hucker.

This letter was initially viewed by Richard D Bostwick at 1/10/2022 6:17 AM.



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: RDB

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'.

**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.

February 10, 2022

To whom it may concern,

ADK

This letter is to verify that Richard Bostwick (DOB [REDACTED]) 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.

Thomas C. Bond, M.D.

EXHIBIT 2

APPEALS COURT
Full Court Panel Case
Case Docket

RICHARD D. BOSTWICK vs. 44 CHESTNUT STREET & others
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2019-P-0589

CASE HEADER

| | | | |
|----------------|----------------------------------|------------------|---------------------------|
| Case Status | Closed: Rescript issued | Status Date | 02/09/2022 |
| Nature | Real Estate | Entry Date | 04/19/2019 |
| Appellant | Plaintiff | SJ Number | |
| Brief Status | | Case Type | Civil |
| Panel | Green, C.J., Sullivan, Shin, JJ. | Brief Due | |
| Citation | 99 Mass. App. Ct. 1107 | Argued/Submitted | 12/03/2020 |
| Lower Court | Middlesex Superior Court | Decision Date | 01/22/2021 |
| Lower Ct Judge | Kenneth V. Desmond, Jr., J. | TC Entry Date | 09/04/2015 |
| FAR Number | FAR-28091 | SJC Number | SJC-13061 |

INVOLVED PARTY

Richard D. Bostwick
Pro Se Plaintiff/Appellant
Blue br, app & reply br filed
3 Enls, 169 Days

44 Chestnut Street
Defendant

Kyle Barnard
Defendant/Appellee
Red brief filed
1 Enl, 8 Days

Philip Bates
Defendant/Appellee
Red brief filed
1 Enl, 8 Days

Federal National Mortgage Association
Defendant/Appellee
Joins in brief of another party
Due 02/26/2020
1 Enl, 44 Days

Richard Gantt
Defendant/Appellee
No brief expected
1 Enl, 44 Days

Paul N. Hunter
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

Paul N. Hunter
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

Warren M. Laskey
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

Leonard J. Sims Custom Carpentry
Defendant/Appellee
Red brief filed
1 Enl, 29 Days

General Contractors Leonard J. Sims Co.
Defendant/Appellee
Red brief filed
1 Enl, 29 Days

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.](#)
[Abigail Fee, A.A.G.](#)

[Timothy Dismas Hartnett, A.A.G.](#)

[Timothy Dismas Hartnett, A.A.G.](#)
[Abigail Fee, A.A.G.](#)

[Mark B. Lavoie, Esquire](#)

[Mark B. Lavoie, Esquire](#)

[Timothy Dismas Hartnett, A.A.G.](#)
[Abigail Fee, A.A.G.](#)

Red brief filed
1 Enl, 64 Days

Massachusetts Appeals Court
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

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

Middlesex Superior Court
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

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

Orlans Moran PLLC
Defendant/Appellee
Red brief filed
1 Enl, 4 Days

Effie L. Gikas, Esquire

Santander Bank
Defendant/Appellee
Red brief filed
1 Enl, 18 Days

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

Leonard J. Sims
Defendant/Appellee
Red brief filed
1 Enl, 4 Days

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

Executive Office of Health and Human Services Dept.
Defendant/Appellee
Red brief filed
1 Enl, 64 Days

Timothy Dismas Hartnett, A.A.G.
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 Brief](#)
[Appellee Barnard another Brief](#)
[Appellee Orlans PC Brief](#)

[Appellee Sims Others Brief](#)
[Appellee Santander Bank N A Brief](#)
[Appellee Hunter Other Brief](#)

ORAL ARGUMENTS

0:00 / 0:00

DOCKET ENTRIES

| Entry Date | Paper | Entry Text |
|------------|-------|--|
| 04/19/2019 | #1 | Lower Court Assembly of the Record Package |
| 04/19/2019 | | Notice of entry sent. |
| 04/19/2019 | #2 | Affidavit of indigency (IMPOUNDED) filed for Richard D. Bostwick. |
| 04/19/2019 | #3 | Motion to Waive entry fee filed by Richard D. Bostwick. The Motion to Waive entry fee is allowed conditionally, subject to review by the single justice. This appeal is now docketed for purposes of Mass. R. A. P. 19(a), which requires the appellant to serve and file the appeals brief and record appendix within the next forty days. Notice Sent. |
| 04/19/2019 | #4 | Civil Appeal Entry Form filed by Richard D. Bostwick |
| 04/24/2019 | | RE#3 The appellant appears incapable of paying the filing fee. The court hereby allows the Motion to Waive entry fee. (Blake, J.) Notice Sent. |
| 05/03/2019 | #5 | Docketing Statement received from Richard D. Bostwick. |
| 05/22/2019 | #6 | MOTION to extend brief & appendix due date, filed by Richard D. Bostwick. |
| 05/23/2019 | | RE#6: Allowed to 08/27/2019. Notice sent. |

| | |
|----------------|--|
| 08/16/2019 #7 | Motion to file 2 copies of brief, appendix and transcripts and to serve one copy, filed for Richard D. Bostwick. |
| 08/16/2019 #8 | Motion to exceed page limit, filed for Richard D. Bostwick. |
| 08/20/2019 | RE#8: The motion to exceed the brief page limit is denied. Appellant is granted additional time to file a conforming brief and appendix. The documents are to be filed on or before 9/10/19. (Vuono, J.). *Notice sent. |
| 08/20/2019 | RE#7: Allowed. See court's action on paper#8. *Notice. |
| 10/02/2019 #9 | Notice of appearance filed for Santander Bank by Attorney Matthew Kane. |
| 10/02/2019 #10 | Notice of appearance filed for Santander Bank by Attorney Payal Salsburg. |
| 10/04/2019 | Notice preceding dismissal: Standing Order Governing Dismissals for Lack of Prosecution. *Notice. |
| 10/17/2019 #11 | MOTION to extend brief & appendix due date, filed by Richard D. Bostwick. |
| 10/29/2019 | RE#11: Allowed to 11/14/2019. (Desmond, J.). Notice sent. |
| 11/18/2019 | {Entry vacated by the court. See order issued 11/20/19.] ORDER: DISMISSAL under Standing Order Governing Dismissals for Lack of Prosecution. *Notice. |
| 11/20/2019 | ORDER: The order issued 11/18/19 is vacated as having entered in error. Appellant attests that he mailed his brief and appendices on or before the enlarged due date. The documents are accepted for filing this date. *Notice |
| 11/19/2019 #12 | Appellant brief filed by Richard D. Bostwick. |
| 11/19/2019 #13 | Appendix Vol I. filed by Richard D. Bostwick. |
| 11/19/2019 #14 | Appendix Vol II. filed by Richard D. Bostwick. |
| 11/19/2019 #15 | Appendix Vol III. filed by Richard D. Bostwick. |
| 11/19/2019 #16 | Appendix Vol IV. filed by Richard D. Bostwick. |
| 11/19/2019 #17 | Appendix Vol V. filed by Richard D. Bostwick. |
| 11/19/2019 #18 | Appendix Vol VI. filed by Richard D. Bostwick. |
| 11/19/2019 #19 | Transcript filed for Richard D. Bostwick. |
| 11/25/2019 #20 | MOTION of Appellee to extend brief due date filed for Paul N. Hunter, Paul N. Hunter, Warren M. Laskey, Donna Levin, Massachusetts Appeals Court, Middlesex Superior Court and Executive Office of Health and Human Services Dept. by Attorney Abigail Fee. |
| 11/25/2019 #21 | Motion to file an amended or replacement brief by 12/11/2019, filed by Richard D. Bostwick. |
| 11/26/2019 | RE#21: Allowed. A replacement brief, clearly marked "REVISED," and including the within described amendments to the brief previously submitted (and already returned to appellant) is due on or before 12/11/19. *Notice |
| 12/04/2019 | RE#20: Allowed to 02/21/2020. Notice sent. |
| 12/13/2019 #24 | REVISED Appellant brief filed by Richard D. Bostwick. |
| 12/23/2019 #22 | Notice of rejection of e-filed brief/appendix of Kyle Barnard, Philip Bates as noncompliant for the reasons indicated on the checklist: 11 document is not OCR searchable. Accordingly, on or before 12/27/2019, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix.*Notice sent. |
| 12/24/2019 #23 | Appellee brief filed for Kyle Barnard and Philip Bates by Attorney Jeffrey Cymrot. |
| 01/06/2020 #25 | MOTION of Appellee to extend brief due date filed for Santander Bank by Attorney Payal Salsburg. |
| 01/07/2020 | RE#25: Allowed to 01/31/2020. Notice sent. |
| 01/14/2020 #26 | Notice of rejection of e-filed brief/appendix of Orlans Moran PLLC as noncompliant for the reasons indicated on the checklist: 25. Accordingly, on or before 01/17/2020, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix.*Notice sent. |
| 01/14/2020 #27 | Notice of rejection of e-filed brief/appendix of Leonard J. Sims Custom Carpentry as noncompliant for the reasons indicated on the checklist: 3. Accordingly, on or before 01/17/2020, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix.*Notice sent. |
| 01/14/2020 #28 | Appellee brief filed for Orlans Moran PLLC by Attorney Effie Gikas. |
| 01/15/2020 #29 | Appellee brief filed for Leonard J. Sims, Leonard J. Sims Custom Carpentry and General Contractors Leonard J. Sims Co. by Attorney Matthew Lysiak. |
| 01/31/2020 #30 | Appellee brief filed for Santander Bank by Attorney Payal Salsburg. |
| 02/12/2020 | ORDER: Federal National Mortgage Association, Richard Gantt has neither filed a brief nor sought an enlargement of time to file a brief. Accordingly, on or before 02/26/2020, Federal National Mortgage Association, Richard Gantt is to submit a motion to enlarge the time to file the appellee's brief to a date certain. If the Federal National Mortgage Association, Richard Gantt does not intend to file a brief, Federal National Mortgage Association, Richard Gantt should notify the Court, in writing, by that date. If no timely submission is received from Federal National Mortgage Association, Richard Gantt this appeal shall be placed in ready status to be considered by a panel. *Notice. |
| 02/21/2020 #31 | Appellee brief filed for Paul N. Hunter, Paul N. Hunter, Warren M. Laskey, Donna Levin, Massachusetts Appeals Court, Middlesex Superior Court and Executive Office of Health and Human Services Dept. by Attorney Abigail Fee. |
| 02/26/2020 #32 | Notice of appearance filed for Federal National Mortgage Association by Attorney Matthew Kane. |
| 02/26/2020 #33 | RESPONSE to Court Order dated 02/12/2020 filed for Federal National Mortgage Association by Attorney Matthew Kane. |
| 02/27/2020 | RE#33: It is noted that Federal National Mortgage Association joins in the brief of Appellee Santander Bank, N.A. *Notice. |

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| 02/28/2020 #34 | MOTION to extend reply brief due date, filed for Richard D. Bostwick. |
| 03/02/2020 | RE#34: Allowed to 03/27/2020 for the filing of appellant's reply brief. *Notice. |
| 06/16/2020 #35 | Motion misc relief (Motion Requesting Leave of Court to Amend the 18 May 2020, Exhibit B) , filed for Richard D. Bostwick. |
| 06/29/2020 #36 | Motion to Amend the 06/16/2020 docket entry Paper #35, filed for Richard D. Bostwick. |
| 07/01/2020 #37 | Motion request for leave of court , filed by Richard D. Bostwick , Pro Se Plaintiff/Appellant. |
| 07/06/2020 | RE#35: After review of the plaintiff's motion and exhibits and two subsequent amendments, it appears that the defendant is seeking leave to file a late reply brief 95 pages in length. The plaintiff's submissions suggest that the additional time is necessary due to, inter alia, his medical conditions. His request for additional time in which to file a reply brief is allowed. The plaintiff also request leave to file a reply brief that is 95 pages long. The basis for this request seems to be the lengthy procedural history involving multiple cases and the complexity of the issues and facts that he wishes to present. Pursuant to Mass. R. A. P. 20 (2) (e), a motion to exceed the length limitations on a brief will not be granted except for extraordinary reasons. The plaintiff has failed to establish extraordinary reasons to allow an additional 75 pages. The motion to file a 95 page reply brief is denied. Because the plaintiff will need time to edit his reply brief and because of the delay occasioned by reviewing the substantial filings in connection with his requests, the time for filing the plaintiff's reply brief is enlarged to 07/31/2020. So ordered. [fn.1]. (Hand, J.). *Notice. |
| | <p>[fn.1] The plaintiff references the Americans with Disabilities Act in his motion and has submitted medical documentation. To the extent his request for additional time to file his reply brief is a request for a reasonable accommodation, I have granted relief in excess of the relief sought on other grounds. The voluminous filings do not appear to suggest that the additional pages sought are requested as a reasonable accommodation, nor are there apparent grounds to infer that the additional pages requested would be an "appropriate aid[or] service[] to [the plaintiff could] participate equally in the services, programs, or activities of the Judiciary" as someone without the plaintiff's disabilities. See Massachusetts Court System, ADA Accessibility Policy (2018) (Accessibility Policy). Therefore, I have not considered the request for additional pages as a request for a reasonable accommodation.</p> |
| 07/06/2020 | RE#36: See action on paper #35. *Notice. |
| 07/06/2020 | RE#37: See action on paper #35. *Notice. |
| 07/13/2020 | Notice sent seeking information on unavailability for oral argument in September 2020 |
| 07/14/2020 | Response from Jeffrey J. Cymrot, Esquire re: unavailable September 18. |
| 07/20/2020 #38 | Response from Abigail Fee, A.A.G. re: unavailable for oral argument September 10. |
| 07/21/2020 #39 | Response from Richard D. Bostwick Plaintiff/Appellant, Pro Se re: unavailable for oral argument September 8, 9, 10, 11, 14, 15, 16, 17, 18. |
| 07/27/2020 #40 | Notice of appeal, filed by Richard D. Bostwick. |
| 07/27/2020 #41 | Motion to Waive entry fee filed by Richard D. Bostwick. The Motion to Waive entry fee is allowed conditionally, subject to review by the single justice. This appeal is now docketed for purposes of Mass. R. A. P. 19(a), which requires the appellant to serve and file the appeals brief and record appendix within the next forty days. Notice Sent. |
| 07/27/2020 #42 | Affidavit of indigency (IMPOUNDED) filed by Richard D. Bostwick. |
| 07/30/2020 | ORDER: (RE#41) The Motion to Waive entry fee is allowed. The appellant's appeal from the 7/6/2020 single justice order on #35, is now docketed under this docket number and consolidated with the appellant's underlying appeal. Pursuant to M.A.C. Rule 15.0(b)(2)(B), the appellant shall file and serve within 14 days of entry of this consolidation order, a memorandum of law, with citations to pertinent legal authorities, not to exceed 10 pages in monospaced font or 2,000 words in proportionally spaced font, identifying the claimed abuse of discretion or error of law committed by the single justice. The memorandum of law shall be accompanied by a record appendix that includes the papers filed to the single justice, including any memorandum of decision from the single justice. Any response by the appellee shall be a memorandum of law not to exceed 10 pages in monospaced font or 2,000 words in proportionally spaced font, filed and served within 14 days after service of the appellant's memorandum of law. This order supersedes the order included in the entry of #41. *Notice |
| 08/10/2020 | Notice sent seeking information on unavailability for oral argument in October 2020 |
| 08/12/2020 | Response from Jeffrey J. Cymrot, Esquire re: available all dates for oral argument.. |
| 08/13/2020 #43 | Response from Payal Salsburg, Esquire re: unavailable for oral argument October 15, 16, 19. |
| 08/14/2020 #44 | Response from Abigail Fee, A.A.G. re: unavailable for oral argument October 8,13. |
| 08/20/2020 #45 | Response from Richard D. Bostwick, Pro Se Plaintiff/Appellant, re: unavailable for oral argument October 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19. |
| 08/25/2020 #46 | Memorandum of Law, filed by Richard D. Bostwick. (Received 08/13/2020) |
| 08/25/2020 #47 | Supplemental Appendix re Memo of Law Vol I of I filed for Richard D. Bostwick. (Received on 8/13/2020) |
| 08/25/2020 #48 | Proposed Reply brief filed for Richard D. Bostwick. (Received on 8/13/2020) |
| 08/25/2020 #49 | Proposed Supplemental Appendix Vol I of III filed for Richard D. Bostwick. (Received on 08/13/2020) |
| 08/25/2020 #50 | Proposed Supplemental Appendix Vol II of III filed for Richard D. Bostwick. (Received on 8/13/2020) |
| 08/25/2020 #51 | Proposed Supplemental Appendix Vol III of III filed for Richard D. Bostwick. (Received on 8/13/2020) |
| 08/26/2020 #52 | RESPONSE filed for Federal National Mortgage Association and Santander Bank by Attorney Payal Salsburg. |

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| 08/26/2020 | ORDER: (RE#48, #49, #50 & #51) As the body of the reply brief is in excess of the 20 page limitation established in Mass.R.A.P., as well as the 95 pages sought in paper #35, and because the single justice's order on paper #35 is at issue in the consolidated appeal, the reply brief and accompanying supplemental appendices are designated as "proposed" on the court's docket, with their propriety referred to the panel designated to decide the appeal. *Notice |
| 09/09/2020 | Notice sent seeking information on unavailability for oral argument in November 2020 |
| 09/10/2020 #53 | Response from Payal Salsburg, Esquire re: unavailable for oral argument November 3, 4, 5, 9, 10, 12, 17. |
| 09/10/2020 | Response from Jeffrey J. Cymrot, Esquire re: available all dates for oral argument.. |
| 09/11/2020 | Returned Email: Notice of Pre-Scheduling and Unavailability to Argue sent to Alex F. Mattera returned as could not be delivered. Notice resent to updated email address. |
| 09/21/2020 #54 | Response from Richard D. Bostwick, Pro Se Plaintiff/Appellant, re: unavailable for oral argument November 2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17. |
| 09/25/2020 | RE#54: The appellant's response to the court's notice of pre-scheduling and unavailability to argue in November 2020 is noted. The court has sought the appellant's unavailability to argue for the months of September 2020, October 2020, and November 2020. In response to each notice, the appellant has not indicated availability on any proposed date and has sought to stay oral argument in this appeal for various reasons including the resolution of an appeal of a single justice's 07/06/2020 order denying the plaintiff leave to file a reply brief in excess of the length limitations established in the Mass. R. A. P. On 07/30/2020, the appeal of the single justice's 07/06/2020 was ordered docketed and consolidated under this docket number and consistent with M.A.C. Rule 15.0(b)(2)(B) the appellant has filed a memorandum of law and appendix regarding the appeal of the single justice's 07/06/2020 order. Further, notwithstanding the single justice's 07/06/2020 order, the appellant has filed a reply brief that is in excess of the 20 page limitation established in Mass. R. A. P., as well as the 95 pages sought from the single justice, and with accompanying supplemental appendices. These documents have been designated as "proposed" on the court's docket, with their propriety referred to the panel designated to decide the appeal. |
| | <p>It is ordered that oral argument will be held in this case during the court's December 2020 sitting calendar. On or before 10/09/2020, the appellant is to notify the court, in writing, of any preplanned unavailability (such as vacation, or medical procedure) for each business day (excluding State holidays) during the month of December 2020. After considering the appellant's response and the unavailability of the appellees, the court will issue a notice for oral argument, which will be held with or without the appellant's participation. To the extent the appellant's response docketed as P#54 states the appellant requires time to modify/rewrite his reply brief, this order is without prejudice to the appellant seeking leave to do so following the procedures of Mass. R. A. P. 16(n). (Milkey, J.). *Notice.</p> |
| 09/28/2020 #55 | Response from Attorney Payal Salsburg re: unavailable for oral argument December 7,9 and 11. |
| 10/01/2020 #56 | Response from Richard D. Bostwick, Pro Se Plaintiff/Appellant, re: available all dates in December. |
| 10/02/2020 #57 | Response from Attorney Effie Gikas re: unavailable December 14, 15, 16, 17, 18. |
| 10/09/2020 | Notice sent seeking information on unavailability for oral argument in December 2020 (See response to paper #54 dated 9/25/2020). |
| 10/19/2020 | Response from Jeffrey J. Cymrot, Esquire re: available all dates for oral argument.. |
| 11/04/2020 #58 | Notice of 12/03/2020, 9:30 AM argument at Videoconference (A4) (a4vc) sent. |
| 11/13/2020 | Response from Abigail Fee, A.A.G. re: will appear and argue on 12/03/2020. |
| 11/16/2020 | Response from Mark B. Lavoie, Esquire re: will appear and argue on 12/03/2020. |
| 11/17/2020 | Response from Effie L. Gikas, Esquire re: (Telephone confirmation) will appear and argue on 12/03/2020. |
| 11/17/2020 | Response from Richard D. Bostwick, Pro Se Plaintiff/Appellant, Pro Se re: (Telephone confirmation) will appear and argue on 12/03/2020. |
| 11/17/2020 | Response from Richard D. Bostwick, Pro Se Plaintiff/Appellant, Pro Se re: (email confirmation) will appear and argue on 12/03/2020. |
| 11/17/2020 | Response from Jeffrey J. Cymrot, Esquire re: (Email confirmation) will appear and argue on 12/03/2020. |
| 11/17/2020 | Response from Jeffrey J. Cymrot, Esquire re: (Email confirmation) will appear and argue on 12/03/2020. |
| 11/18/2020 | Response from Payal Salsburg, Esquire re: (Email confirmation) will appear and argue on 12/03/2020. |
| 11/18/2020 #59 | Notice of appearance filed for Federal National Mortgage Association by Attorney Payal Salsburg. |
| 11/23/2020 #60 | Motion for leave to file reply brief, filed by Richard D. Bostwick |
| 11/25/2020 #61 | Proposed reply brief |
| 11/25/2020 | RE #60: Referred to the panel designated to decide the appeal. *Notice. |
| 12/03/2020 | Oral argument held. (Green, C.J., Sullivan, J., Shin, J.). |
| 12/21/2020 #62 | Notice of withdrawal as counsel filed for Leonard J. Sims by Attorney Jason Canne. |
| 01/22/2021 | RE#49: Accepted for filing. (Green, C.J., Sullivan, J., Shin, J.). *Notice. |
| 01/22/2021 | RE#50: Accepted for filing. (Green, C.J., Sullivan, J., Shin, J.). *Notice. |
| 01/22/2021 | RE#51: Accepted for filing. (Green, C.J., Sullivan, J., Shin, J.). *Notice. |
| 01/22/2021 | RE#60: Allowed. (Green, C.J., Sullivan, J., Shin, J.). *Notice. |
| 01/22/2021 | RE#61: Allowed. (Green, C.J., Sullivan, J., Shin, J.). *Notice. |

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| 01/22/2021 | ORDER: In accordance with the memorandum and order issued this date, the argument raised by the plaintiff concerning the Superior Court's dismissal of the claims against the Appeals Court is reported to the Supreme Judicial Court for consideration and determination pursuant to G. L. c. 211A, § 12. The Clerk of the Appeals Court shall transfer the case file to the Clerk of the Supreme Judicial Court for the Commonwealth. (Green, C.J., Sullivan, J., Shin, J.) *Notice |
| 01/22/2021 #63 | 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, J.J.) *Notice. |
| 01/22/2021 | Notice of report of the argument raised by the plaintiff concerning the Superior Court's dismissal of counts 6 and 7 of amended complaint against the Appeals Court is reported to the Supreme Judicial Court for consideration and determination pursuant to G. L. c. 211A, § 12, sent to Supreme Judicial Court, Clerk for the Commonwealth and entire file available in Livelink document management system for transfer. Notice to parties/SJC Clerk for Commonwealth |
| 02/16/2021 | FAR-28091 opened. |
| 04/15/2021 | FAR DENIED (on 04/15/2021). |
| 04/20/2021 | ORDER: The rescript in this matter is held pending a decision in SJC-13061. *Notice |
| 11/23/2021 #64 | Copy of RESCRIPT (Rescript Opinion) received from SJC affirming the order of the Superior Court judge dismissing all claims against the Appeals Court. |
| 11/23/2021 | RESCRIPT to Trial Court. |
| 12/06/2021 #65 | Motion to Fix Rescript, filed by Richard D. Bostwick. |
| 12/07/2021 #66 | Addendum to paper #65 with IMPOUNDED information, filed by Richard D. Bostwick, Pro Se Plaintiff/Appellant. |
| 12/07/2021 #67 | ORDER: This court's rescript in 19-P-589, issued to the Superior Court on 11/23/2021, is hereby recalled from the Superior Court, with its issuance to be further stayed pending issuance of the rescript pursuant to Mass. R. A. P. 23(b) in SJC-13061. Notice/Attest |
| 12/07/2021 | RE#65: See court's order issued this date. To the extent the appellant seeks a revision to this court's docket entry #64, the entry reflects docket entry #10 in SJC-13061. Accordingly, any request for correction of the entry should be advanced in the SJC. As a courtesy, a note is added to this court's docket to reflect that entry #64 is the decision in SJC-13061 as that term is defined in Mass. R. A. P. 1(c). *Notice. |
| 12/07/2021 | Note: Entry #64 is the decision in SJC-13061 as that term is defined in Mass. R. A. P. 1(c). |
| 01/13/2022 #68 | Notice of Massachusetts General Hospital states in Exhibit 1 received from Richard D. Bostwick. |
| 02/09/2022 | Rescript issued for SJC-13061 on 02/03/22. |
| 02/09/2022 | RESCRIPT to Trial Court. |

As of 02/10/2022 11:15am

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."⁴ 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

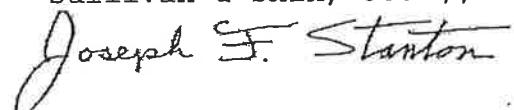
Conclusion. So much of the judgment dated September 27, 2016, dismissing Bostwick's claims against Santander and Fannie Mae, to the extent they challenge the foreclosure on 44 Chestnut Street, is vacated. So much of the appeal from the judgment dated May 17, 2018, as concerns the Appeals Court is reported 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.

EXHIBIT 3

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.

EXHIBIT 4



Richard Bostwick <rdbappeals@gmail.com>

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: ██████████ 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: ██████████ 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]

 **SJC-13061_Published_Opinion_(01-21-22).pdf**
161K

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

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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

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Abigail Fee, A.A.G.