

VII. ADDENDUM CONTENTS

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SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

WILMINGTON TRUST, NATIONAL ASSOCIATION, trustee, vs. RENEE
ANNA NAJDA
FAR-28571

CASE HEADER

Case Status	FAR denied; recon denied	Status Date	06/03/2022
Nature	Mortgage/foreclosure law	Entry Date	11/18/2021
Appeals Ct Number	<u>2020-P-0768</u>	Response Date	02/07/2022
Appellant	Defendant	Applicant	Defendant
Citation	489 Mass. 1105	Case Type	Civil
Full Ct Number		TC Number	19SM006105
Lower Court	Land Court	Lower Ct Judge	Gordon H. Piper, J.

INVOLVED PARTY

Wilmington Trust, N.A.
Plaintiff/Appellee

Renee Ann Najda
Pro Se Defendant/Appellant

ATTORNEY APPEARANCE

Christine Kingston, Esquire
Kevin Polansky, Esquire
Erika Hoover, Esquire
Zoh Nizami, Esquire - Withdrawn

DOCKET ENTRIES

Entry Date	Paper	Entry Text
11/18/2021		Docket opened.
11/18/2021	#1	MOTION to file FAR application late filed by Renee Ann Najda. (ALLOWED to January 24, 2022.)
01/24/2022	#2	FAR APPLICATION filed by Renee Ann Najda.
03/17/2022	#3	DENIAL of FAR application.
03/18/2022	#4	MOTION for time extension to file a motion for reconsideration filed by Renee Ann Najda. (ALLOWED to May 2, 2022)
05/02/2022	#5	MOTION to reconsider denial of FAR application filed by Renee Ann Najda.
06/03/2022	#6	DENIAL of motion to reconsider denial of FAR application.

As of 06/03/2022 5:20pm

Wilmington Trust v. Najda

Appeals Court of Massachusetts

November 2, 2021, Entered

20-P-768

Reporter

2021 Mass. App. Unpub. LEXIS 682 *; 100 Mass. App. Ct. 1112; 2021 WL 5113445

WILMINGTON TRUST, NATIONAL ASSOCIATION, trustee,¹ vs.
RENEE ANNA NAJDA.²

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, 881 N.E.2d 792 (2008).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

Prior History: Citibank, N.A. v. Najda, 2016 U.S. Dist. LEXIS 4167, 2016 WL 158502 (D. Mass., Jan. 13, 2016)

¹ Of the MFRA Trust 2015-1.

² Also known as Renee Najda.

Disposition: Judgment affirmed.

Core Terms

servicemember, rights, entitled to benefits, foreclosure, proceedings, mortgagor, entitled to protection, claim preclusion, due process, declaration, protections, appearance, challenges, deprived

Judges: Wolohojian, Sullivan & Ditkoff, JJ. [*1]

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff filed a complaint in the Land Court under the Massachusetts Soldiers' and Sailors' Civil Relief Act (MSCRA) to determine if the defendant, Renee Anna Najda, was entitled to the foreclosure protections under the Federal Servicemembers Civil Relief Act (SCRA). The defendant appeals from a judgment of the Land Court declaring that she is not entitled to the benefits of the SCRA. As the defendant made no claim in the Land Court that she was entitled to the benefits of the SCRA (nor does she make any such claim here), the Land Court properly refused to accept the defendant's filing or appearance. Accordingly, we affirm.

"The [MSCRA] . . . provides that only those defendants who are entitled to the benefits of the SCRA, or those acting on their behalf, 'shall be entitled to appear or be heard in [a servicemember] proceeding.'" HSBC Bank USA, N.A. v. Matt, 464 Mass. 193, 198, 981 N.E.2d 710 (2013) (*Matt*), quoting St. 1943, c. 57, § 1, as amended through St. 1990, c. 496, § 1. Accord Marley v. Bank of New York, 483 Mass. 1027, 1028, 136 N.E.3d 1196 (2020). Accordingly, a court entertaining a servicemember proceeding may not accept the responsive filing or appearance of a person who does "not assert in her responsive pleading that she was entitled to the protections of the SCRA." *Matt, supra at 199*. The [*2] defendant made no assertion, here or in the Land Court, that she was entitled to the protections of the SCRA, and thus her pleading was properly rejected.

The defendant challenges this settled law as a violation of her rights to due process and to petition the courts. To the extent that she is arguing that she is being deprived of the right to challenge the foreclosure, the Supreme Judicial Court has upheld the constitutionality of this regime, as "other adequate procedures are available to the mortgagor in the same or another forum where these issues may be raised prior to the mortgagor's loss of his possessory or other important rights in the property subject to the mortgage." Beaton v. Land Court, 367 Mass. 385, 391, 326 N.E.2d 302 (1975). In this regard, the defendant has been afforded an extensive opportunity to challenge the foreclosure in Federal District Court, including both a jury trial and factual determinations by a Federal District Court judge, and an appeal to a Federal Circuit Court. If she has challenges that could not have been raised in those Federal proceedings, she can raise them in other proceedings. See Mancuso v. Kinchla, 60 Mass. App. Ct. 558, 567, 806 N.E.2d 427 (2004) ("Under the Federal law of claim preclusion, final judgment on the

merits of an action bars the parties or their privies [*3] from relitigating claims that were or could have been raised in that action"). See also Korn v. Paul Revere Life Ins. Co., 83 Mass. App. Ct. 432, 439, 984 N.E.2d 882 (2013) (claim preclusion based on Federal judgment applies to claim that could have been brought during course of that litigation).³

To the extent that the defendant complains that she is being deprived of the opportunity to raise defenses to the SCRA declaration, she is in error for the simple reason that, because the defendant is not a servicemember, the proceeding did not adjudicate any of her rights. "[A] servicemember proceeding cannot affect the rights or interests of nonservicemembers." *Matt*, 464 Mass. at 199. "Such proceedings are not part of the foreclosure process and 'are not determinative of any issue beyond the extent of such defendants' rights under the SCRA, if any.'" *Marley*, 483 Mass. at 1029, quoting *Matt, supra at 204*. "[A]n action brought pursuant to the [MSCRA] is limited to a determination whether the mortgagor is entitled to the benefit and protections of the [SCRA]." JB Mtge. Co., LLC v. Ring, 90 Mass. App. Ct. 93, 98 n.8, 56 N.E.3d 866 (2016). As the defendant is not a servicemember, no right or interest of hers was affected by the proceeding, and thus her due process rights were not violated. "The fundamental requisite of due process is an opportunity to be heard at a meaningful time and in a meaningful manner," [*4] Moore v. Executive Office of the Trial Court, 487 Mass. 839, 844, 170 N.E.3d 680 (2021), quoting Matter of Kenney, 399 Mass. 431, 435, 504 N.E.2d 652 (1987), not to be heard at a time and in a forum of the defendant's choosing. See Matter of Haese, 468 Mass. 1002, 1006, 9 N.E.3d 326 (2014).

³ To the extent that the doctrine of res judicata may bar further challenges, that would merely demonstrate that the defendant has had the opportunity to make those challenges.

Judgment affirmed.

By the Court (Wolohojian, Sullivan & Ditkoff, JJ.⁴),

Entered: November 2, 2021.

End of Document

⁴The panelists are listed in order of seniority.