

## APPENDIX A

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Decision of State Court of Appeals	1
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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

21-P-721

RICHARD D. BOSTWICK

vs.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES & others.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff appeals from a May 6, 2021, order of the Superior Court denying his April 30, 2021, motion to "vacate, modify and set aside" a March 2, 2011, judgment under Mass. R. Civ. P. 59 (e), 365 Mass. 827 (1974), and Mass. R. Civ. P. 60 (b), 365 Mass. 828 (1974).<sup>2</sup> He claims that the judge erred in determining that he was time barred from bringing his motion, because the judge failed to consider the effect on the case of an automatic stay in bankruptcy.

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<sup>1</sup> Department of Public Health, Leonard J. Sims, and The Classic Group, Inc.

<sup>2</sup> The plaintiff previously filed a motion to vacate the judgment on March 14, 2011, and the motion was denied by order entered on March 21, 2011. A notice of the motion at issue on appeal was filed on March 29, 2021 (pursuant to Rule 9E of the Superior Court [2020]), and after opposition was received, the Superior Court Rule 9A packet was filed on April 30, 2021.

The judge denied the defendant's motion because it sought to reopen a judgment that was more than ten years old. The plaintiff's motion under rule 59 (e) was required to be brought within ten days of the judgment. See Mass. R. Civ. P. 59 (e). See also Stephens v. Global NAPS, 70 Mass. App. Ct. 676, 682 (2007) (rule 59 [e] motions filed after ten-day deadline will be considered under rule 60 [b]). The defendant fared no better under rule 60 (b), which only allows a motion to be brought more than one year after judgment if the judgment is void, satisfied, or for some other reason not specified in Mass. R. Civ. P. 60 (b) (1) (excusable neglect), (2) (newly discovered evidence), or (3) (fraud). See Mass. R. Civ. P. 60 (b). See also Owens v. Mukendi, 448 Mass. 66, 71-72 (2006). Even then, the motion must be brought within a reasonable time. See Mass. R. Civ. P. 60 (b).

Here, the plaintiff's motion was premised on the theory that the March 2, 2011, judgment is void because, at the time it issued, there was an automatic stay of the proceedings due to a defendant, The Classic Group, Inc., having filed for bankruptcy. "The filing of a voluntary bankruptcy petition operates as an automatic stay of 'the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case.'" Beverly v. Bass River

Golf Mgt., Inc., 92 Mass. App. Ct. 595, 599 (2018), quoting 11 U.S.C. § 362(a)(1) (2012).

The Superior Court's March 2, 2011, judgment, however, did not commence or continue an action against a debtor in bankruptcy. Rather, the judgment terminated a suit against a debtor; thus, the automatic stay did not prohibit the court's action. See Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) (purpose of automatic stay is to relieve debtors of collection proceedings which would nullify Bankruptcy Code's objective).

Additionally, since the plaintiff filed his motion more than ten years after a judgment of which he was aware,<sup>3</sup> it was well within the judge's discretion to determine that the motion was not filed within a reasonable time. See Owens, 448 Mass. at

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<sup>3</sup> That the plaintiff was aware of the judgment at the time is evidenced by his earlier motion to vacate filed within the month of entry of judgment.

74-77 (three-year delay unreasonable where party was aware of facts giving rise to motion to vacate at time of judgment).

Order entered May 6, 2021,  
denying motion to vacate,  
affirmed.

By the Court (Meade, Singh &  
D'Angelo, JJ.<sup>4</sup>),

*Joseph F. Stanton*  
Clerk

Entered: January 12, 2023.

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<sup>4</sup> The panelists are listed in order of seniority.

## APPENDIX B

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Decision of State Trial Court	1
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**CLERK'S NOTICE**

DOCKET NUMBER

**1081CV01775****Trial Court of Massachusetts  
The Superior Court**

## CASE NAME:

Bostwick, Richard D. vs. Department of Public Health et al

Michael A. Sullivan, Clerk of Court  
Middlesex County

## TO:

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

## COURT NAME &amp; ADDRESS

Middlesex County Superior Court - Woburn  
200 Trade Center  
Woburn, MA 01801

You are hereby notified that on 05/06/2021 the following entry was made on the above referenced docket:

Endorsement on Motion to (1)Vacate, Modify and Set Aside the 02 March 2011 Judgment under Mass.R.Civ.P. Rule 59(e) given Titled 11 s 108(c)(2), Extension of Time;  
(2) Make Additional Findings of Fact under Mass.R.Civ.P. Rule 52(b) given Title 11 s 108(c)(2), Extension of Time;  
(3) Relief from the 02 March 2011 Final Judgment under Mass.R.Civ.P. Rule 60(b) and  
(4) Amend, Relate Back and Supplement this Civil Action No. 1081CV01775, First Amended Complaint under Mass. R.Civ.P. Rule 15 (#21.0): DENIED

After review and full consideration of the arguments presented, the Plaintiff's Motion is DENIED as untimely pursuant to Mass.R.Civ.P.59(e) which requires such a motion to be filed within 10 days of entry of Judgment. The Plaintiff seems to vacate a Judgment of this Court from more then ten(10) years ago. The motion is also untimely pursuant to Mass. R.Civ.P.60, as the basis of the motion lies in mistake and alleged new information which required a filing within one year after the Judgment. Further, there is no merit to the Plaintiff's other arguments in support of this Motion. SO ORDERED. Dated: May 4, 2021 and notices mailed 5/6/21

Judge: Haggan, Hon. Patrick

DATE ISSUED

05/06/2021

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. Patrick Haggan

SESSION PHONE#

(781)939-2772

## APPENDIX C

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Decision of State Supreme Judicial Court (SJC)	1
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Richard Bostwick <rdbappeals@gmail.com>

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## FAR-29206 - Notice: FAR denied

1 message

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SJC Full Court Clerk <SJCCommClerk@sjc.state.ma.us>  
To: rdbappeals@gmail.com

Wed, Apr 12, 2023 at 6:00 PM

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. FAR-29206

RICHARD D. BOSTWICK

vs.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES & others

Middlesex Superior Court No. 1081CV01775  
A.C. No. 2021-P-0721

### NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on April 12, 2023, the application for further appellate review was denied.

Francis V. Kenneally Clerk

Dated: April 12, 2023

To: Richard D. Bostwick  
Carlos Eduardo Cousins, A.A.G.  
Benjamin J. Weber, Esquire  
Abigail Fee, A.A.G.  
Michael J. St Andre, Esquire  
Mark B. Lavoie, Esquire  
Matthew Lysiak, Esquire  
Paul Crowell, Esquire

## APPENDIX D

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Supreme Court Application Number 23A11	1
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**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

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

July 11, 2023

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

Re: Richard D. Bostwick  
v. Massachusetts Executive Office of Health and Human Services,  
et al.  
Application No. 23A11

Dear Mr. Bostwick:

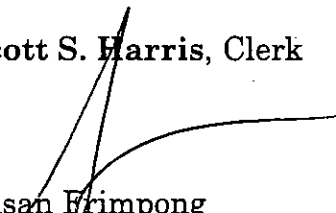
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Jackson, who on July 11, 2023, extended the time to and including September 9, 2023.

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

Sincerely,

**Scott S. Harris, Clerk**

by

  
Susan Frimpong  
Case Analyst

## APPENDIX E

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discussion. *Commonwealth v. Domanski*, 332 Mass. 66, 78 (1954).

*Judgment affirmed.*

**All Citations**

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

**Footnotes**

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

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RICHARD D. BOSTWICK,  
Plaintiff,

v.

C.A. No. 11-10662-GAO

JUSTICE DOUGLAS H. WILKINS, ET AL.,  
Defendants.

MEMORANDUM AND ORDER

O'TOOLE, D.J.

For the reasons stated below: (1) Plaintiff's Motion to Proceed *in forma pauperis* (Docket No. 2) is ALLOWED; and (2) this action is DISMISSED *sua sponte* in its entirety.

BACKGROUND

On April 18, 2011, Plaintiff Richard D. Bostwick ("Bostwick") a resident of Wakefield, Massachusetts, filed a self-prepared civil rights Complaint under 42 U.S.C. § 1983 naming as Defendants Justice Douglas H. Wilkins of the Middlesex County Superior Court, and Chief Justice Phillip Rapoza of the Massachusetts Appeals Court. Bostwick asserts jurisdiction pursuant to 28 U.S.C. § 1331, and seeks only injunctive relief with respect to an adverse state court ruling concerning an unauthorized deleading complaint involving Bostwick's property.<sup>1</sup>

The Complaint is not entirely coherent or organized. From what can be discerned from the Complaint and the attached exhibits, the relevant background is as follows. In 1997, a lead paint inspector hired by Bostwick found lead hazards at his residential property. Bostwick hired Leonard J. Sims, Co. ("Sims"). and The Classic Group, Inc. ("The Classic

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<sup>1</sup>Attached to the Complaint were various exhibits, including, *inter alia*, copies of pleadings from Bostwick's state court case.

Group”) to delead the property, however, those companies were not authorized to perform deleading work. As a result, Bostwick was unable to obtain a letter of full compliance from the Massachusetts Department of Public Health (“DPH”) in accordance with 105 Code Mass. Regs. § 460.730(E). Bostwick later filed civil lawsuits against Sims and The Classic Group in the Middlesex Superior Court. See Bostwick v. Sims, et al., Civil Action No. 2004-02417-D; Bostwick v. The Classic Group, Civil Action No. 08-01465-J.

In August 2008, the lead paint inspector found that lead hazards remained on the property, and also found prior deleading conducted by unauthorized contractors. Thereafter, on September 2, 2008, the DPH Childhood Lead Poisoning Prevention Program issued an “Unauthorized Deleading Complaint” against Bostwick’s property as a result of unauthorized deleading by construction contractors.<sup>2</sup> As a result, Bostwick claims he suffered a loss of property value and income, and was subject to foreclosure proceedings by Sovereign Bank and other banking institutions.

On March 2, 2010, Bostwick filed a Notice of Claim for an Adjudicatory Proceeding with the DPH. His request for a hearing was denied by DPH on April 7, 2010, on the grounds that: (1) pursuant to 105 Code Mass. Regs. § 460.900, Bostwick was not entitled to an adjudicatory hearing since lead violations remained on the property;<sup>3</sup> and (2) because no factual basis was set forth by Bostwick providing a basis for a hearing, particularly where

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<sup>2</sup>Bostwick claims that Sims started the Unauthorized Deleading work without his knowledge, and The Classic Group finished the work, but performed the unauthorized deleading without his knowledge.

<sup>3</sup>It appears that at its core, the issue was whether Bostwick was required to correct ongoing lead violations before he may be given a hearing by DPH.

there was no dispute that the unauthorized deleading occurred at the property.

As a result of this denial of a DPH hearing, Bostwick claimed he was been denied due process with respect to his property, in violation of constitutional law, the Massachusetts Declaration of Rights, and the Massachusetts Administrative Procedure Act.

On May 7, 2010, Bostwick filed a Complaint in the Middlesex Superior Court against the Commonwealth of Massachusetts, DPH, Sims, et al., and The Classic Group, et al. See Bostwick v. Commonwealth of Massachusetts, Executive Office of Health and Human Resources, et al., Civil Action No. 10-1775. He filed a First Amended Complaint on September 2, 2010.<sup>4</sup> In that state action, Bostwick sought judicial review and a Declaratory Judgment with respect to the DPH's denial of his request for an adjudicatory hearing regarding the unauthorized deleading. Bostwick also sought a Declaratory Judgment in the state case challenging the constitutionality of the DPH's regulations regarding hearings for property owners with lead violations.

Thereafter, without Bostwick's knowledge, on January 25, 2011, The Classic Group, Inc. filed for Chapter 7 Bankruptcy. As a result, Bostwick alleges that, pursuant to 11 U.S.C.

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<sup>4</sup>The First Amended Complaint identifies three Defendants: (1) The Commonwealth of Massachusetts Executive Office of Health and Human Services Department of Public Health; (2) Leonard J. Sims a/k/a Leonard Joseph Sims, Leonard J. Sims Co., General Contractors, and Leonard J. Sims Custom Carpentry; and (3) The Classic Group, Inc., previously known as Classic Restorations, Inc. Count I alleges a claim against the DPH for judicial review of 105 Code Mass. Regs § 460.900. Count II alleges a claim against the DPH, Sims, and The Classic Group requesting judicial review of his due process rights to an adjudicatory proceeding. Bostwick asserted there was an actual controversy with Sims and The Classic Group because they claimed they are not parties to the Unauthorized Deleading Complaint. Bostwick sought a hearing with DPH that included Sims and The Classic Group. Counts III-VI alleged claims for Declaratory Judgment against DPH, Sims, and The Classic Group.



§ 362, there was an Automatic Stay prohibiting any actions against the debtor. See Exh. (Docket No. 1-7). Further, Bostwick alleges that without his knowledge, a hearing on a Rule 12 Motion to Dismiss was held on February 7, 2011.<sup>5</sup>

On March 2, 2011, Justice Wilkins entered a Memorandum of Decision and Order on the Defendants' Motion to Dismiss, and a Declaratory Judgment entered based on that decision. See Memorandum of Decision and Order on the Defendants' Motion to Dismiss; Declaratory Judgment (Docket Nos. 1-6). Justice Wilkins dismissed the claims against Sims and The Classic Group pursuant to Mass. R. Civ. P. 12(b)(9) because of the two prior actions filed against them pending in the Middlesex Superior Court.

On April 22, 2010, Bostwick filed the instant action alleging that Justice Wilkins and Chief Justice Rapoza, vicariously and through their agents and interactions with him, violated his due process rights and have deprived him his property.<sup>6</sup> He also contends that the Massachusetts Rules of Appellate Procedure do not provide a procedure to redress his situation. Bostwick asserts that, because of the Automatic Stay with respect to The Classic Group, he could be subject to civil contempt by the Bankruptcy Court, and/or civil liability should he seek to appeal. He further claims that on March 29, 2011 and again on April 14, 2011, he went to the Appeals Court Clerk's Office in Boston, and in each instance, he told the

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<sup>5</sup>Bostwick filed a written Opposition to the DPH's Motion to Dismiss and a Memorandum of Law in support, as well as an Affidavit in support. See Opposition, Docket No. 1-2.

<sup>6</sup>Bostwick makes no factual allegations with respect to any actions or inactions of Chief Justice Rapoza. It is unclear whether his claim is based on vicarious liability because of the clerks' statements that the appellate clock had been triggered by the Entry of Declaratory Judgment by the Superior Court.

Clerks that given the Automatic Stay he cannot appeal or take any action in the Superior Court or the Appeals Court. He also advised them that he intended to appeal; however, the clerks advised him that the appellate clock started under Rule 4 and there was no way to stop it.<sup>7</sup> Accompanying his Complaint, Bostwick filed a Motion for Leave to Proceed *in forma pauperis* (Docket No. 2), and a Motion for Preliminary Injunctive Relief (Docket No. 3). In the motion, Bostwick seeks an injunction against the Defendants, and all persons named in his state court lawsuit (*i.e.*, the Commonwealth of Massachusetts Executive Office of Health and Human Resources, Department of Public Health, Leonard J. Sims, et al., and The Classic Group, Inc. et al.) to the effect that they are ordered to desist and refrain from violating the Automatic Stay under 11 U.S.C. § 362 until further Order of the Court.

On April 26, 2011, this Court entered an Electronic Order denying Bostwick's Motion for Preliminary Injunctive Relief.

### DISCUSSION

#### I. The Motion for Leave to Proceed *In Forma Pauperis*

Bostwick's financial disclosures in his Application to Proceed *in forma pauperis* indicate that he no substantial assets or income. Based on these disclosures, the Court finds that he lacks sufficient funds to pay the \$350.00 filing fee for this action.

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<sup>7</sup>Interestingly enough, however, on March 11, 2011, Bostwick filed a Motion to Vacate Declaratory Judgment and Strike the Memorandum of Decision and Order on the Defendants' Motion to Dismiss, noting the Automatic Stay. In other words, notwithstanding the Automatic Stay, Bostwick still sought relief from the judgment. On March 21, 2011, Bostwick's motion was denied by Justice Wilkins. Bostwick's incorporated Affidavit appears to include a motion for appellate review as well; however, whether this is sufficient to preserve his state appellate rights is a matter for state interpretation, and this Court need not address this matter.

Accordingly, Bostwick's Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) is ALLOWED.

II. The Court May Screen The Amended Complaint

Because Bostwick has sought to file his Complaint without the prepayment of the filing fee, summonses have not issued in order to allow the Court an opportunity to review the Complaint to determine if it satisfies the requirements of section 1915 of Title 28, the federal *in forma pauperis* statute. See 28 U.S.C. § 1915.

Section 1915 authorizes the federal courts to dismiss an action in which a plaintiff seeks to proceed without prepayment of the filing fee if the action lacks an arguable basis either in law or in fact, Neitzke v. Williams, 490 U.S. 319, 325 (1989), or if the action fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915 (e)(2)(B)(ii) and (iii). When subject matter jurisdiction is lacking, there is no arguable or rational basis in law or fact for a claim, Mack v. Massachusetts, 204 F. Supp. 2d 163, 166 (D. Mass. 2002), and the action may be dismissed *sua sponte* and without notice under Section 1915. Neitzke, 490 U.S. at 327-328 (interpreting the former § 1915 (d)); accord Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). ("clearly baseless" actions may be dismissed).

Similarly, claims lack an arguable or rational basis in law when they are brought against a defendant who is clearly entitled to immunity, involve the infringement of a legal interest which clearly does not exist, or describe unreal scenarios. See Neitzke, 490 U.S. at 327-328 (interpreting the former § 1915(d)); accord Denton, 504 U.S. at 32 ("clearly baseless" actions may be dismissed); see also Mack, 204 F. Supp. 2d at 166; Tapia-Ortiz v.

Winter, 185 F.3d 8, 11 (2d Cir. 1999) (affirming dismissal of plaintiff's request for convening a grand jury to investigate alleged conspiracy of 20 judges and assistant U.S. Attorney); Street v. Fair, 918 F.2d 269 (1st Cir. 1990) (§ 1915(d) *sua sponte* dismissals do not require notice to plaintiff with opportunity to respond if the claim is based on an "indisputably meritless legal theory" (such as where defendants are clearly immune)).

A district court may also dismiss a complaint *sua sponte*, regardless of whether or not payment of the filing fee has been received, where the allegations contained in the complaint, taken in the light most favorable to the plaintiff, are patently meritless and beyond all hope of redemption. Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001) (citations omitted); cf., Bell v. Hood, 327 U.S. 678, 682-83 (1946) (observing that dismissal for lack of subject matter jurisdiction may result if the federal claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or...is wholly insubstantial and frivolous.").

In addition to the statutory screening requirements under § 1915, this Court has an independent obligation to inquire, *sua sponte*, into its own subject matter jurisdiction.<sup>8</sup>

In conducting the preliminary screening, Bostwick's *pro se* pleadings are construed generously. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520 (1972); Instituto de Educacion Universal Corp. v. U.S. Dept of Education, 209 F.3d 18, 23 (1st Cir. 2000). However, even under a generous reading, this action shall be dismissed *sua*

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<sup>8</sup>McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004). See In re Recticel Foam Corp., 859 F.2d 1000, 1002 (1st Cir. 1988) ("It is too elementary to warrant citation of authority that a court has an obligation to inquire *sua sponte* into its subject matter jurisdiction, and to proceed no further if such jurisdiction is wanting.").

*sponte* for the reasons set forth below.

### III. Absolute Judicial Immunity Bars Claims Against All State Judges

Bostwick's civil rights claims against Justice Wilkins and Chief Justice Rapoza are not cognizable because absolute judicial immunity protects judges from acts performed within the scope of their jurisdiction. Mireles v. Waco, 502 U.S. 9, 11 (1991) (*per curiam*) ("[J]udicial immunity is an immunity from suit, not just from the ultimate assessment of damage."); Pierson v. Ray, 386 U.S. 547, 553-554 (1967) (absolute judicial immunity protects integrity of judicial process); Allard v. Estes, 197 N.E. 884, 886 (1935) (stating that it "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 by law.").

The reason for recognizing this form of immunity is that:

[T]he nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have.... [T]his is the principal characteristic that adjudication has in common with legislation and with criminal prosecution, which are the two other areas in which absolute immunity has most generously been provided. If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication.

Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 768 (3d Cir. 2000) (quoting Forrester v. White, 484 U.S. 219, 226-27 (1988)).

In this case, although Bostwick may believe that the Defendants erred in their actions or inactions, there is no reasonable or credible allegation, nor could there be, that the actions

or inactions of these judges were taken outside the scope of their jurisdiction. Thus, even if these judges erred in their decisions, or acted negligently or maliciously, their actions or inactions would not constitute the type of extra-judicial activity exempting them from entitlement to absolute judicial immunity. Further, Bostwick's attempt to obtain federal review of state court matters by seeking only injunctive relief and not monetary damages against the judges is insufficient to take this matter outside the doctrine of judicial immunity. As noted above, the doctrine contemplates an immunity from suit; the relief sought -- whether it be monetary damages, declaratory relief, or injunctive relief -- is not material to the application of the doctrine.

To the extent that Bostwick believes this Court should disregard the doctrine entirely, or believes that his due process claims trump the absolute judicial immunity doctrine, such assertion is rejected as unfounded and contrary to established law.

Accordingly, Bostwick's claims against Defendants Wilkins and Rapoza are DISMISSED sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and (iii).<sup>9</sup>

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<sup>9</sup>As an additional matter, to the extent that Bostwick is seeking to hold the two justices liable for unspecified actions or inactions of unnamed agents or employees, his § 1983 claims are not cognizable because there is no *respondeat superior* liability under § 1983. "It is well-established that 'only those individuals who participated in the conduct that deprived the plaintiff of his rights can be held liable'" under § 1983. Velez-Rivera v. Agosto-Alicea, 437 F.3d 145, 156 (1st Cir. 2006) (quoting Cepero-Rivera v. Fagundo, 414 F.3d 124, 129 (1st Cir. 2005)). "[In civil rights actions], 'supervisors are not automatically liable for the misconduct of those under their command. A plaintiff must show an affirmative link between the subordinate [employee] and the supervisor, whether through direct participation or through conduct that amounts to condonation or tacit authorization.'" Velez-Rivera, 437 F.3d at 156 (quoting Carmona v. Toledo, 215 F.3d 124, 132 (1st Cir. 2000)). See Pinto v. Nettleship, 737 F.2d 130, 132 (1st Cir. 1984) (liability can only be imposed upon officials who were involved personally in the deprivation of constitutional rights).

In addition to the legal impediment discussed above, there are other legal impediments to Bostwick's claims that warrant dismissal of this action *sua sponte*.

IV. Lack of Jurisdiction to Grant Mandamus Relief

To the extent Bostwick seeks mandamus relief to compel the state court judge(s) to rule a certain way with respect to his case, or to vacate the state court ruling(s) (as is inferred from his request for relief in the form of an Order restraining the Defendants "from doing certain acts and things" see Compl. at 5), this Court lacks jurisdiction to grant the mandamus relief requested.

Section 1361 of Title 28 governs the original jurisdiction of the district court of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. 28 U.S.C. § 1361. This applies to federal officers, employees or agencies, but does not apply to state court judges. See Burnett v. Superior Court of Marin County, 573 F. Supp. 345 (N.D. Cal. 1983) (district court lacks jurisdiction to compel state court to perform its alleged duty).

Similarly, this Court lacks jurisdiction under 28 U.S.C. § 1651, to compel a state judicial officer to act. Section 1651 provides authority to the Supreme Court and all courts established by an Act of Congress to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. Section 1651 is not available in this case because a federal district court cannot, by writ of mandamus, direct a state court or judicial officer to perform an official act. See In re Campbell, 264 F.3d 730, 731 (7th Cir. 2001) (petition for writ of mandamus filed under § 1651 denied; federal court cannot control or interfere with state court litigation by way of

mandamus); See also Offutt v. Kaplan, 884 F. Supp. 1179, 1183, 1187-88 (N.D. Ill. 1995) (federal action brought under § 1651 and § 1983 against presiding judge in state custody proceedings dismissed on ground that a federal district court has no jurisdiction to review state judicial proceedings; citing, *inter alia*, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983)).

V. Jurisdictional Bars to Bostwick's Claims

As noted above, Justice Wilkins issued a Memorandum and Order of Decision and Order on the Defendants' Motion to Dismiss in connection with Bostwick v. Dept. of Public Health, et al., Civil Docket No. MICV2010-1775. Based on that opinion, a Declaratory Judgment issued on March 2, 2011 by an Assistant Clerk in the Middlesex County Superior Court Clerk's Office. See Declaratory Judgment; Notice of Judgment Entry (Exh. No. 1-6). In his Complaint, Bostwick alleges that the appeal period has expired and that he has no appellate avenues.

In light of this, the Court presumes that a final judgment has been rendered by the state court. If this is indeed the case, then, to the extent that Bostwick is seeking federal review of this final decision by Justice Wilkins, this Court lacks subject matter jurisdiction to conduct such review, pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine is a distillation of two Supreme Court decisions: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine precludes a federal action if the relief requested in that action would effectively reverse a state court decision or void its holding or if the plaintiff's claims are "inextricably intertwined" with the state court's decision. See Johnson v. De Grandy, 512 U.S. 997,



1005-1006 (1994); Exxon Mobil Corp. v. Saudi Basic Industries Corp., Inc., 544 U.S. 280 (2005) (doctrine applies to cases by state court losers seeking review and rejection of state court judgments rendered prior to commencement of federal suit).

Here, the Declaratory Judgment was that Bostwick had no present right to a hearing, inspection, or other relief from the DPH, and that he could not include Leonard J. Sims or The Classic Group, Inc. in any present claim against the DPH. The Declaratory Judgment also held that 105 Code Mass. Regs. § 460.900 was not unconstitutional as applied to the facts of his case. In light of this, Bostwick's request for injunctive relief from the final judgment of his state court case is so inextricably intertwined with the state court's Declaratory Judgment as to invoke the doctrine. At its core, by instituting this action for injunctive relief, Bostwick seeks to circumvent the final judgment of a state court and continue to preserve his rights to proceed against the state Defendants.

As noted above, the Court presumes that a final judgment has been rendered by the state. Nevertheless, to the extent that Bostwick's state case has not reached a final judgment, his claims in this Court fair no better. This Court must abstain from judicial review of any pending state court litigation. The federal courts have long recognized the "fundamental policy against federal interference with state criminal proceedings." Younger v. Harris, 401 U.S. 37, 46 (1971); In re Justices of the Superior Court Dept. of the Massachusetts Trial Court, 218 F.3d 11, 16 (1st Cir. 2000). See also Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 237-38 (1984) (federal court abstention from jurisdiction appropriate where "federal claims could have been or could be presented in ongoing state judicial proceedings that concern important state interests."). The Younger abstention doctrine has been applied to

other non-criminal proceedings, such as Bostwick's civil action.<sup>10</sup>

Here, Bostwick's request for this Court to interfere with pending state-initiated civil proceedings being prosecuted by him implicates all three prongs of the test, warranting Younger abstention in this case<sup>11</sup>.

Accordingly, this Court lacks jurisdiction to review Bostwick's claims, either based on principles set forth under Rooker-Feldman, or under Younger abstention principles. Therefore, this action must be dismissed in its entirety.

#### CONCLUSION

Based on the foregoing, it is hereby Ordered that:

1. Plaintiff's Motion to Proceed *in forma pauperis* (Docket No. 2) is ALLOWED; and
2. This action is DISMISSED *sua sponte* in its entirety.

SO ORDERED.

/s/ George A. O'Toole, Jr.  
GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

DATED: May 2, 2011

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<sup>10</sup>A federal court must abstain from reaching the merits of a case over which it has jurisdiction so long as there is: (1) an ongoing state judicial proceeding, instituted prior to the federal proceeding (or, at least, instituted prior to any substantial progress in the federal proceeding); that (2) implicates an important state interest; and (3) provides an adequate opportunity for the plaintiff to raise the claims advanced in his federal lawsuit. See Brooks v. New Hampshire Supreme Court, 80 F.3d 633 (1st Cir. 1996) citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982).

<sup>11</sup>While there are exceptions to Younger abstention which would allow a plaintiff to obtain relief in the federal courts, even though doing so would interfere with ongoing state-initiated proceedings, there is nothing presented in the Complaint from which this Court could reasonably infer that Bostwick's case falls in these categories. See Bettencourt v. Board of Registration in Medicine, 904 F.2d 772, 779 (1st Cir. 1990) citing Younger, 401 U.S. at 54.

**APPENDIX F****Index of Appendix F****Court Orders**

Judge Bostwick, 02/25/2021, <b>Order/ Notice</b> in the U.S. Bankruptcy Court, In re The Classic Group, Inc., Debtor that the Chapter 7, 11-10574-JEB Classic Case is Closed. Bostwick finally receives Notice of Case Closure	1
Judge Haggan, 02/22/2021, Order in the Superior Court, Bostwick v. The Classic Group, Inc. Case (Case No. 0881CV01465) stating that the In-going Stay from the year 2011 is Lifted (Vacated) on 02/22/2021.	2



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In re:

THE CLASSIC GROUP, INC.,  
Debtor

Ch. 7  
11-10574-JEB

**Order**

**MATTER:**

#375 Proposed Complaint Filed by Creditor Richard D. Bostwick

Since this bankruptcy case was closed on October 31, 2017, the Court cannot open an adversary proceeding or act on the proposed complaint. Before the proposed plaintiff can commence an adversary proceeding, he must first file a motion to reopen the main bankruptcy case. The motion to reopen must state cause for reopening the case and be accompanied by payment of the required fee. If the case is reopened, the proposed plaintiff may then file an adversary proceeding. For the foregoing reasons, the Court will take no action on this proposed complaint.

Dated: 2/25/2021

By the Court,

A handwritten signature in black ink, appearing to read "Janet E. Bostwick", is written over a horizontal line.

Janet E. Bostwick  
United States Bankruptcy Judge

**CLERK'S NOTICE**

DOCKET NUMBER

0881CV01465

**Trial Court of Massachusetts  
The Superior Court**

## CASE NAME:

Bostwick, Richard D. vs. The Classic Group, Inc. p/k/a Classic Restorations, Inc.

Michael A. Sullivan, Clerk of Court  
Middlesex County

## TO:

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

## COURT NAME &amp; ADDRESS

Middlesex County Superior Court - Woburn  
200 Trade Center  
Woburn, MA 01801

You are hereby notified that on 02/22/2021 the following entry was made on the above referenced docket:

Endorsement on Motion to Dismiss pursuant to Mass R. Civ. P. 41(b)(2) (#41.0): DENIED  
After hearing, Motion to dismiss is DENIED. Based upon the court's determination that the bankruptcy proceeding is no longer open and active the stay is vacated. New tracking order to issue to the parties.

Judge: Haggan, Hon. Patrick

DATE ISSUED

02/23/2021

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. Patrick Haggan

84

SESSION PHONE#

(781)939-2772

## APPENDIX G

### Index of Appendix G

#### U.S. Constitution. Statutes, Regulations, Rules

	1
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Richard D. Bostwick  
Pro Se Petitioner  
44 Chestnut Street, P.O. Box 1959  
Wakefield, MA 01880-5959  
781-279-0789 (Land Line)  
rdbappeals@gmail.com

September 9, 2023

Clerk of the Court  
Supreme Court of the United States  
Office of the Clerk  
1 First Street, NE  
Washington, DC 20543-0001  
Tel: 202-479-3011  
CC: Defendant(s)-Appellee(s)

Re: No.: \_\_\_\_\_  
Application No.: 23A11  
IN THE  
SUPREME COURT OF THE UNITED STATES  
Richard D. Bostwick,  
Pro Se Petitioner;  
vs.  
Massachusetts Executive Office of Health and Human Services, et al;  
Respondent(s).  
On Petition for a Writ of Certiorari to  
Appeals Court  
For the Commonwealth of Massachusetts  
PETITION FOR A WRIT OF CERTIORARI  
Appeals Court Case No.: 21-P-721

Dear Clerk of the Court;

**NOTICE OF BOSTWICK'S DISABILITIES**

~~(SEE PETITION APPENDIX H)~~ *RDB*

Bostwick was unable to finish in his Petition Appendix G, which contains the U.S. Constitution. Statutes, Regulations and Rules due to his Emotional and Physical Disabilities as stated in Bostwick's previous Application for an Extension of Time.

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

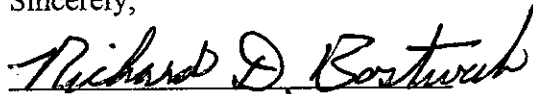
ONLY and asks this Court for a "Reasonable Accommodation" GIVEN his Emotional and Physical Disabilities.

The "Reasonable Accommodation" Requested is Leave to Amend Bostwick's Petition For A Writ of Certiorari by Updating Appendix G, which contains the U.S. Constitution. Statutes, Regulations and Rules. In the alternative, this Court could waive the Supreme Court Requirement of printing the U.S. Constitution. Statutes, Regulations and Rules and consider Bostwick's Petition without Appendix G.

I have served and enclosed (1) a COVER LETTER TO THE CLERK; (2) a MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and its AFFIDAVIT; (3) a PETITION FOR A WRIT OF CERTIORARI and (4) Supreme Court Rule 29, PROOF OF SERVICE on each party and this U.S. Supreme Court. Please find an Original and ten (10) copies for this Supreme Court.

The Pro Se, Plaintiff-Appellant, Petitioner, Richard D. Bostwick, would like to thank you for your attention to this matter.

Sincerely,



Richard D. Bostwick  
BSEE, MSECE, MSCE  
Pro Se Plaintiff-Appellant, Petitioner  
44 Chestnut Street, P.O. Box 1959  
Wakefield, MA 01880-5959  
781-279-0789 (Land Line)  
rdbappeals@gmail.com