

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Christine Hilton, Ruth Adjartey, Ismail)
Abdelhamed, Vesta Ballou, Lori Cairns,)
Jackeline Cucufate, Marjorie Evans,)
Gerard Hughes, Maria Navedo, Paul Norris)
John Schumacher, Jean Atkinson, Edna)
Austell, Annette Bent, Steven Bourassa,)
Samantha Farrar, Patricia Ferreira)
Bonilla, Kelly Johnson, Felix Kangaru,)
Heather Kozac, Cheryl Leblanc, Philippe)
Leblanc, William Marks, Deb McCarthy,) Docket # SJC-12406
Keith McKenzie, Paulette McKenzie,)
Miranda Morgan, Joseph Nuzzolilo,)
Cynthia O'Gara, Mychelyne Oliveira,)
Susan Osborne, Thomas Saxe, Al Solitro,)
Sherry Stanley, Myron Swanston, Stefani)
Tubert, Tracey Tobin, Cynthia White,)
Nunciata Sullivan, Lila Ortiz, Carl)
Rellstab, Carey Souda, Patricia O'Dell,)
Linda Potter, Brian Potter, Jasmine)
Alvarez,)
Petitioner/Intervenor-Appellants)
vs.)
Worcester Housing Court,)
Defendant-Appellee,)

Petitioners' Reconsideration of SJC Decision of April 10, 2019
And To Modify Decision in Christine Hilton, et al., v. Central
Division of the Housing Court Department

NOW COMES Petitioner Debra McCarthy and respectfully
request this Honorable Court, pursuant to the Massachusetts
Rules of Appellate Procedure, Rule 27, to modify its decision of
April 10, 2019 in *Hilton, et al., v. Central Division of the*
Housing Court Department ("Hilton"):

Petitioner seeks an amendment (1) to acknowledge that the Intervenor in this case have been treated as inclusive parties to it and deserve recognition as Petitioners, rather than as Amici Curiae only.

STANDARD OF REVIEW

Petitioner timely (given request for enlargement) requests modification of this Honorable Court's decisions of April 10, 2019 in *Hilton v. Worcester Housing Court* under applicable rule:

"Appellate Procedure Rule 27: Motion for reconsideration or modification of decision

Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present."

Intervenor Discover the Discriminatory Ex Parte Documents

Both issues arise from a procedural situation that is unusual. The initial and amended Petitions in *Hilton* were submitted by the ten Petitioners whom this Court identifies in its *Hilton* decision at footnote 1.¹ All are members of the Worcester Anti-Foreclosure Team (WAFT). This is an unincorporated bank tenants' association whose members support

¹ In addition to named Petitioner Christine Hilton, these are Ismail Abdelhamed, Ruth Adjartey, Vesta Ballou, Lori Cairns, Jacqueline Cucufate, Marjorie Evans, Gerard Hughes, Maria Navedo, Paul Norris, and John Schumacher.

one another to fight the purported foreclosure of their homes.

Thereafter, pro se WAFT member Tracey Tobin discovered by accident that the Clerk's Office of the Central Division of the Housing Court ("Housing Court") had inserted into the file of her purported post-foreclosure summary judgment case certain documents with which she had never been served; which were unauthenticated; and of which she had never been notified, either by Plaintiff or by a Housing Court judge. Contrary to Uniform Summary Process Rule 2, the Housing Court Clerk's Office had docketed these documents as part of entering the case, identifying them as "Foreclosure Deed," and had left them in the case file. There a Housing Court judge who handled any aspect of Tobin's case would see them.

Additional pro se WAFT members then asked at the Clerk's Office to inspect their case files. They discovered that their files, similarly, contained such documents that Plaintiffs had submitted ex parte. This was evidence of systematic bias by the Housing Court, including its Clerk's Office, against pro se WAFT members, in that the Plaintiffs and judges knew of such supposed evidence against the Defendants. The judges could make use of it regardless of whether they cited to it.

Nonetheless, these documents were never procedurally admitted into the record. All the while, the Defendants knew nothing of it. Without knowledge, they could not move to strike

it, or appeal a judge's use of it. The Court is reminded that no one is required to have internet access and not necessarily even have a way to access the docket on line.

It also constituted evidence of the Housing Court's disparate and discriminatory treatment of such pro se Defendants. The hundreds of cases where these had been allowed (and no doubt gone almost completely unchallenged) also would have re-enforced the misperception that they were valid and unchallengeable.

*WAFT members got ex parte documents before this Court
as two separate but identical Appendices*

These WAFT members consulted experienced appellate attorneys about how to enter into this case the evidence of these prejudicial "ex parte documents" which gave expression and a basis to the discrimination those who had found these and were similarly situated to the existing Petitioners were targets of.

The answer was not clear. Thirty-five WAFT members² accordingly took the suggestion of the Appellate attorney who had a specific suggestion: that each of them (1) petition to

² Jean Atkinson, Edna Austell, Annette Bent, Steven Bourassa, Samantha Farrar, Patricia Ferreira Bonilla, Kelly Johnson, Felix Kangaru, Heather Kozac, Cheryl Leblanc, Phillippe Leblanc, William Marks, Deb McCarthy, Keith McKenzie, Paulette McKenzie, Miranda Morgan, Joseph Nuzzolilo, Cynthia O'Gara, Mychelyne Oliveira, Susan Osborne, Thomas Saxe, Al Solitro, Sherry Stanley, Myron Swanston, Stefani Tubert, Tracey Tobin, Cynthia White, Nunciata Sullivan, Lila Ortiz, Carl Rellstab, Carey Souda, Patricia O'Dell, Linda Potter, Brian Potter, and Jasmine Alvarez.

intervene in the *Hilton* case then before this Court; (2) file an Amicus brief in it, as well, containing the same points and authorities; and (3) submit identical copies of their respective ex parte documents with each of these filings, that is, as an Intervenor Appendix, and as an Amicus Appendix, each of which contained the ex parte documents of all 35 pro se Intervenors.

The Petition to Intervene had a white cover. In compliance with the MRAP, the Amicus brief had a green cover. The Intervenor Appendix and Amicus Appendix each filled a carton, and each was clearly marked as such. This Court docketed the Intervenor Appendix. For whatever reason, it did not docket the Amicus Appendix.

As those similarly situated to the existing Petitioners and who had evidence of the same disparate treatment — made concrete in the insertion of the documents ex parte in their files, the decision of this Court would and will directly affect them. As they stated in their intervenor motion, they are to all appearances intervenors as of right.

WAFT member Lori Cairns delivered copies of the Intervenor brief and Intervenor Appendix, Amicus Brief and Amicus appendix to the Attorney General's Office in Worcester by hand within a few days.

Before the single justice: Respondent Housing Court participates as a party; admits Petitioners' facts

On July 18, 2018, this Court docketed a Motion for Preliminary Injunction/Emergency Stay ("Motion"), signed pro se by each of the 10 Petitioners/Appellants, as well as by each of the 35 signatories to both the Intervenor and Amicus briefs. Docket No. SJC-12406, at #28.

On July 20, 2018, by Order #1, this Court referred this Motion to the single justice for disposition. *Hilton, et al., v. Worcester Housing Court*, No.SJ-2018-M030. Thus, this Court acknowledged that the Intervenors' Preliminary Injunction filing and Intervenors are part of the *Hilton* case.

On September 7, 2018, the Housing Court filed #2, Opposition to Motion for Preliminary Injunction/Emergency Stay ("Opposition"). This Opposition admits what the Petitioners, including the Intervenors, had alleged to this Court:

"The Motion alleges, and the Central Housing Court does not dispute, that: (1) on the day a post- foreclosure summary process case is entered, the Central Housing Court routinely receives, files, and docketed a copy of any relevant (1)(a) foreclosure deed, (b) mortgage, or (c) assignment of mortgage, and (2) these entry-day documents routinely do not bear certificates of service."³

The Housing Court thus admitted the facts that the Motion

³ Opposition to Motion for Preliminary Injunction/Emergency Stay, filed for the Housing Court, p. 3. This Opposition also states: "The practice of plaintiff's filing of a foreclosure deed and assignment of mortgage, upon entry of a summary process foreclosure action, appears to be consistent in the other Divisions of the Housing Court Department." *Id.*, fn. 3.

alleged, and for which the Intervenor Appendix (and Amicus Appendix) provided the evidence. Cf. MRCP Rule 8(d).

The Housing Court however argued that this practice:

"appears to be consistent in the other Divisions of the Housing Court Department.⁴ It disagreed that Plaintiffs' submission of documents on entry day and their docketing by the Housing Court Clerk's Office, "constitutes 'ex parte' communications."⁵

While pervasive in the WHC, it only became so near the beginning of 2017. Here are over three dozen Petitioners putting this Court on notice of this prejudicial practice and doing so quickly given its damaging nature even though so recent an unauthorized practice.

It also argued, among other things, that the "case files are customarily available during normal business hours for inspection by the parties..."⁶ Petitioners have direct experience that this is untrue⁷.

They however shown that the WHC addressed in detail the Intervenor's concerns about the ex parte documents; did not dispute and thus admitted that they are what the Intervenor said that they are; and that it argued on behalf of the Housing Court *as a whole*.

⁴ Id., fn. 2,

⁵ Id. at 5.

⁶ Id at 7.

⁷ Petitioner herein McCarthy herself had the Bankruptcy Trustee in her bankruptcy case, a lawyer herself, told not only that she could not have a copy of McCarthy's Summary Process file at the time *but that she would never be allowed a copy!*

This is consistent with the Petitioners', including the Intervenors', having sought relief in the nature of Mandamus against the Housing Court as an institution, and not as to individual cases. It also shows the Housing Court participating fully as a party Respondent, and not, pursuant to S.J.C. Rule 2:22, 422 Mass. 1302 (1996), as a "nominal party" only.⁸

On September 18, 2018, the single justice denied the Petitioners' and Intervenors' Motion for Preliminary Injunction/Emergency Stay. Order, #3. But he did not differentiate the Intervenors from other Petitioners. So the single justice treated the Intervenors as full parties.

Oral Argument: Intervenor Bent argues Intervenor evidence; Housing Court does not object

At oral argument before this Court moreover on December 6, 2018, Intervenor Annette Bent walked this Court through the ex parte documents in her case file, plus her foreclosure-related documents recorded in the Registry of Deeds and available for judicial notice.

Bent showed this Court how a diligent judge would see from this suite of documents that the purported foreclosure by sale of her home was void and of no effect.⁹ She argued that this was true for all the inserted documents for all the other

⁸ Id., fn. 2: "The court is a nominal party only."

⁹ Furthermore, the same is true of the purported foreclosure by sale of the home of each Intervenor, as the Intervenor Appendix (and identical Amicus Appendix) show.

Intervenors. So this Court accepted Bent and, by analogy, the other Intervenor/Petitioners, as the Petitioners whom the single justice, and the Housing Court as well, has considered them.

Furthermore, counsel for the Housing Court was present at oral argument and argued. She never, at the hearing or by means of a submission afterward, made any challenge either to Intervenor/Petitioner Bent's being allowed to argue, or to her evidence or her facts.

In addition, the evidence of Bent and the other Intervenor/Petitioners, in both the Intervenor's Appendix and in their undocketed Amicus Appendix, is in the record still. It has never been struck. The WHC never even moved that it be struck.

Nonetheless, this Court's case caption in *Hilton* identifies as Petitioners only Christine Hilton and the other nine whom its footnote 1 identifies.¹⁰ Of the 35 Intervenor/Petitioners, who with these ten Petitioners signed the Motion for Preliminary Injunction/Emergency Relief that this Court referred to the single justice, *Hilton* says this only: "We acknowledge the amicus brief submitted by more than thirty individuals."¹¹

Prayer for Relief

Petitioners appreciate that this Court acknowledged the Amicus brief. Nonetheless, in light of the facts set forth

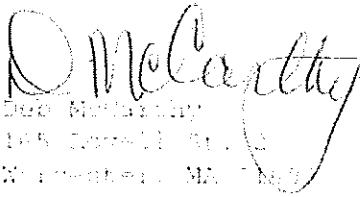
¹⁰ See also fn. 1, above.

¹¹ *Hilton*, fn. 3.

above, we respectfully request that this Court modify its decision in *Hilton* to acknowledge that the 35 Intervenors were indeed Petitioners in this case, and that the Worcester Housing Court treated them as such as a real party and directly addressed their facts.

Respectfully submitted,

Respectfully Submitted,


Don McCarthy
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Date 5/6/19

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

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Re: Docket #16H85SP001313 MidFirst Bank v. Abdelhamed,

Re: Docket #16H85SP004400 MidFirst Bank v. Raymond,

Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

U.S. Bank Trust, N.A. Trustee of VOLT 2012-NPL1 Asset Holdings
Trust v. Swanston,

Re: Docket # 14H85SP000755 Fannie Mae v. Osborne,

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