

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta)
Ballou, Mildred Collins, Jackeline)
Cucufate, Marjorie Evans, Matthew)
Griffin, Gerard Hughes, Donna Mejias-)
Berrios, Janet Montgomery, Elizabeth)
Norris, Luciano Oliveira, Mychelyne)
Oliveira, Susan Osborne, Daniel)
Peristere, Christy Raymond, Caitlin)
Ryals, John Schumacher, Myron Swanston)
Petitioner-Appellants)

Docket No. SJC-12380

v.)

Worcester Housing Court,)
Original Respondent-Appellee,)
Santander Bank, Midfirst Bank,)
Nationstar Mortgage LLC, MRH Sub1LLC,)
Freddie Mac, Fannie Mae, U.S. Bank N.A.)
As Trustee Of J.P. Morgan Acquisition)
Trust 2006-WMC3, Lisa Y. Barron, HSBC)
Bank USA N.A. As Trustee For Nomura)
Asset Acceptance Corporation Mortgage)
Pass Through Certificates Series)
2005-AR3, HSBC Bank USA N.A. As Trustee)
On Behalf Of Fremont Home Loan Trust)
2006-CMortgage-Backed Certificates)
Series2006-C, Savers Co-Operative Bank,)
Deutsche Bank National Trust Co. Trustee)
For Ameriquest Mortgage Securities Inc.)
Asset-Backed Pass-Through Certificates)
Series 2003-13, US Bank N.A. As Trustee)
For Bear Stearns Asset Backed Securities)
Trust 2004-Ac4, U.S. Bank Trust N.A.)
Trustee Of Volt 2012-NP11Asset Holdings)
Trust)
Respondents-Appellees)

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
in regard to seeking relief through direct appeals

NOW COMES the Petitioners Cynthia O'Gara (filing into
 Hilton) and Donna Mejias Berrios (filing into Adjartey) and
 requests a reconsideration of the Court decision given on April
 10, 2019 wherein the Court decided that the Petitioners could
 (therefore, should) have used direct appeals as an avenue of
 relief as opposed to relief through the superintendence powers
 of this Court.

The Petitioners recognize that this Honorable Court is the
 Court of last resort, two issues exist with this: first, that
 these petitions address systemwide discrimination on these
 statuses shared far beyond Petitioners and an arguably hostile.

environment and no Court but this Court has jurisdiction to address the need for courtwide adjustment; second, to the extent that the Court is correct that appeals might represent an avenue in theory, we respectfully submit that this Honorable Court it ignores the bleak reality of the situation within the Worcester Housing Court ("WHC").

The discriminatory practices within the WHC is so pervasive that pro se litigants are routinely denied any opportunities to appeal that are not completely in their control¹.

The Petitioners provided evidence of same in the briefs which were the subject of the Court's decision². However, for the

¹ For instance, see this Court's presumption of the possibility for Direct Appeal, p. 4 of the *Hilton* decision (which Petitioner can attest is not a reality):

"For example, the denial of a request for a particular judge's recusal could have been adequately addressed in a direct appeal from an adverse final judgment. See *Haddad v. Gonzalez*, 410 Mass. 855, 860-862 (1991) (considering denial of plaintiff's motion for recusal on direct appeal of summary process action). See also *Mani v. United Bank*, 458 Mass. 1027, 1028 (2011) (petitioners "did not demonstrate why the judge's or the clerk's allegedly improper actions could not be adequately addressed in a regular appeal from the final judgment"). Similarly, the petitioners are free to raise issues of disparate treatment or denial of any particular rights in a direct appeal of their summary process cases. Indeed, the petitioners generally aver that WAFT members "continue to appeal on an individual basis in their own cases" (although they do not specifically state whether any of the petitioners in this case are doing so or elaborate on their statement that "the majority" of WAFT members who have sought to appeal have "had their appeals rights blocked")."

² For instance, as to the matter of denied cds, before the Court FM existed and before the Appeals Court provided an impounded means for filing affidavits of indigency, the cost of two journeys into Boston to waive a \$50.50 (filing and hearing) made,

purpose of this motion the Petitioners submit further arguments to support this claim.

STANDARD OF REVIEW

Petitioners timely (given request for enlargement) request modification of this Honorable Court's decisions of April 10, 2019 in Adjarthey v. Worcester Housing Court and 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."

ARGUMENT

Attached for the Court's review is a spreadsheet of the 95 cases which represent all³ of the Appeals Court cases that any of the 46 litigants succeeded in getting docketed at the Appeals Court. This spreadsheet alone is evidence that the Petitioners have attempted to seek relief through direct appeals.

Of the 95 cases, 89 are appeals to a Single Justice, the Petitioners submit that this is the case because the WHC has created a practice of using the misapplication of indigency laws

it prohibitively more expenses for an interlocutory appeal that the cost of the cd which was already depriving indigent parties of the necessities of life - the reason for the wavier request.

³ The Appellate Case Search was done by names of the Petitioners as a subset and revealed the cases listed in the attached.

to prevent pro se litigants from appealing their decisions to the full panel. Instead, pro se litigants are forced to appeal to single justices because this method of appeal does not require the WHC to decide on granting the pro se litigants leave to appeal. A perusal of the spreadsheet would indicate that this has been the situation since September 2015.

There have only been 6 cases where any of the Petitioners have been successful at being granted leave to appeal to a full panel. Two were recently referred by a Single Justice directly to a full panel and therefore these two would have managed to bypass any intervention or barriers created by WHC.

The remaining two were filed because the Worcester Housing Court, as part of the appeal bond appeal to a Single Justice, sent a letter saying that the defendant could now docket their full appeal and even though that letter was sent untimely the two litigants used it to go ahead and docket their appeal.

The Petitioners respectfully submit that it would be one thing if the WHC were denying leave to appeal to pro se litigants on the application of trite legal principles. However, that is simply not the case.

If the Court were to peruse the decisions of the WHC in denying leave to appeal to the full panel the Court would inevitably come to the conclusion that the WHC deliberately misapplies the law to deny pro se litigants leave to appeal.

First, this Honorable Court is now aware that in none of these cases did the WHC apply a test for standing -- even after Hatcher or even after aware of this Honorable Court's dialogue with Petitioner Schumacher clarifying the absolute applicability of *Hatcher* decision in foreclosure-related eviction cases. This is true even though Petitioners all identified a challenge to standing in any Answer filed in their cases and in pleadings in their cases referenced the same legal citations as this Court did in *Hatcher*; those cases establish the evidentiary standard for challenges to standing. This has never been applied in these cases. Therefore, every full appeal included that the WHC had never established its subject matter jurisdiction⁴.

Specifically, the law related to non-frivolousness, indigency, reasonableness, and even arguments related to standing.

Further, there are even blatant instances where the WHC has refused to acknowledge controlling legal precedent by this Court when pro se litigants point to these decisions as controlling on the WHC. Furthermore, in some instances pro se litigants are

⁴ This is especially problematic when the WHC claimed a Notice of Appeal was filed too late. A judgment without subject matter jurisdiction is void and an appeal could never be untimely. This, for instance, was used to bar Elizabeth Norris' appeal where to this date not actual judgment ever entered. It was used in the three Swanston appeals where the Clerk-Magistrate had turned away their timely appeal with his "strong advice" to Swanston to wait for the decision in the fourth case and then refused them when Swanston returned with them later.

told they are not allowed to address the Court on the law and even cite case law on issues. So, it is such that pro se litigants are denied a fair opportunity to argue their cases for leave to be granted to appeal the very same WHC decisions.

Even if this Court find that a handful of the decisions to deny leave to the Petitioners were within the confines of the law, it does not take away from the fact that the majority simply are not. Further, it does not take away the fact that the WHC has created such a hostile and discriminatory environment that the Petitioners, and other pro se litigants, find that the avenue of direct appeal to be futile.

It in this regard, that the Petitioners submit that such pervasive discriminatory practices is made even more institutionalized where, Petitioners are forced to argue before the very Court they are seeking to appeal, wherein that Court has specific control over the decision of allowing the Petitioners leave to appeal their very own decisions.

In *Adjartey*, this Court in its explanation of the standard for deciding whether to deny a waiver of the "extra fee" as to an audio recording, included that this same "reasonableness" standard applies to Appeal Bonds as also an extra fee. However, where a context is overwhelmingly pervaded by prejudice a "reasonable" standard for decision is not a reliable standard. Such is the circumstance in this WHC.

It is the control of these decisions that is cause for concern. The Petitioners requests that this Court examine the decisions in the lower court cases for bases of appeal found frivolous. Petitioners list some of the cases and just the most obvious of the number of violations in mortgaging and foreclosure raised in each case:

Adjartey: No auction ever held, affidavits of witnesses provided. Appeal dismissed because WHC never assembled record.

Abdelhamed: FHA underwritten mortgage, mortgage-required face-to-face meeting never offered nor held.

Cucufate: Ibanez gap: purported assignment to party that could not hold title.

Evans: paying when declared in default on the mortgage; egregious due process violations as to disability.

Mejias-Berrios: Appeal barred because Court would not acknowledge indigency either under 'A' or even look at it under 'C'.

Montgomery: Due process violation of Jury Trial where Jury told to treat her differently as not a lawyer; called "Ms.", lawyer for Plaintiff referred to as "Counsel"; numerous other disparate treatment in front of jury which was also given. Plaintiff evidence Judge had struck during argument.

Osborne: foreclosed by not real party in interest in the mortgage; appeal treated as untimely even though standing never tested and based on delay in use and occupancy payment due to delayed Workers' Comp payment even though Plaintiff accepted it once paid as timely.

Swanston: first "strongly advised" not to file Appeals Notice on 3 units timely; then gave up when cds not provided for three months.

Ballou: never received judgment then blocked from reconsideration by refusal to accept filing and schedule when LAR available. FHA underwritten mortgage, mortgage-required face-to-face meeting never offered nor held.

Bent: Ibanez gap: purported assignment to party that could not hold title. Judge had dismissed Plaintiff's previous case against her for never complying with order to provide evidence that assignment could have been received.

Bourassa: auction not advertised in paper with circulation where home is located.

Bonilla: Party listed as grantee in foreclosure deed filed later in registry that it was NOT grantee - foreclosure clearly never occurred.

Kangaru: auctioned wrong property at auction.

LeBlanc, C: No auction ever held, affidavits of witness provided.

Marks: Foreclosure deed misnames highest bidder - especially material as highest bidder broke into triple-decker, scared off tenants.

McCarthy: Foreclosure of mortgage that was criminally forged - under criminal investigation

Oliveira: No auction ever held, affidavits of witness provided. Filed appeal in case against foreclosing entity but WHC never assembled record; bank then sold invalid deed to third party purchaser later; for health reasons, no due process in second case.

Solitro: Threatened into signing "agreement" for judgment that he "had read" even though he is blind, never could have read it and so had no chance to defend himself.

Stanley: Never served right to cure letter (undisputed fact) nor legal Notice of Sale because foreclosing entity ignored recorded Probate decision that she is now owner of the property.

Sullivan: No auction ever held, affidavits of witnesses provided.

Tobin: Ibanez gap

Potter: Added post-judgment with no rights to answer, discovery, jury trial. Ibanez gap with assignment by unauthorized grantee. Recorded Power of Attorney to different party.

The Petitioners submit that such control over decisions of appeal is exactly why the Petitioners view direct appeals as a futile attempt.

The Petitioners respectfully submit that it would be naïve to believe where there is blatant misapplication of the law as this Court admonished in its review of reasons audio recordings have been denied, that the very Court that engages in such blatant misapplication would be impartial in arriving at decisions to allow the Petitioners to appeal to a full panel.

REZNIK v. GARAFFO, 466 Mass. 1034 (2013):

"We are satisfied that further attempts in the trial court to remedy the situation would have been futile, and therefore relief under G. L. c. 211, § 3, was warranted. See Reznik v. District Court Dep't of the Trial Court, 456 Mass. 1001 , 1001 (2010); Elles v. Zoning Bd. of Appeals of Quincy, 450 Mass. 671 , 673 n.8 (2008); Driscoll v. T.R. White Co., 441 Mass. 1009 , 1010 (2004)."

CONCLUSION

As such the Petitioners submit that this is exactly why the Petitioners require a form of relief.

Justice must not only be done but must also be seen as done.

The decision of this Court does very little to prevent further harm to the pro se litigants seeking access to justice through direct appeals. It is therefore necessary that this Court use its superintendence powers to resolve what is clearly a hostile and unjust environment.

Respectfully yours,

Donna Mejias-Berrios

Donna Mejias-Berrios

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Date 5.9.19

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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Mortgage Association v. Hughes

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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,

Re: Docket #13H85CV000283, Fannie Mae v. Griffin

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Date 5.9.19

LISTING OF ALL APPEALS DOCKETED BY 46 PETITIONERS IN SJC-12380 AND SJC-12406

Case Name	Docket #	Nature	Date
HSBC BANK USA, N.A. & ANOTHER VS. PAUL L. NORRIS	2011-P-1916	Mortgage/foreclosure law	11/8/11
US. BANK NATIONAL ASSOCIATION VS. EDNA SCHUMACHER & ANOTHER	2012-P-0990	Mortgage/foreclosure law	6/19/12
US BANK NATIONAL ASSOCIATION VS. EDNA SCHUMACHER & ANOTHER	2012-P-0990	Mortgage/foreclosure law	6/19/12
US BANK NATIONAL ASSOCIATION VS. JOHN C. SCHUMACHER & ANOTHER	2014-J-0202	Motion for MRAP 6(a) stay	5/20/14
HSBC BANK USA, NATIONAL ASSOCIATION VS. ANNETTE NORRIS & ANOTHER	2014-P-1054	Mortgage/foreclosure law	7/7/14
US: BANK NATIONAL ASSOCIATION VS. JOHN SCHUMACHER & ANOTHER	2014-P-1456	Mortgage/foreclosure law	9/19/14
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. MATTHEW GRIFFIN	2014-J-0434	GLc 231, s 118, p 1	10/27/14
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. MATTHEW GRIFFIN	2015-P-0383	Real Estate	3/19/15
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. ARTHUR A. OSBORNE JR. & ANOTHER	2015-J-0152	Appeal Bond c 239, s 5	4/21/15
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. ARTHUR A. OSBORNE & ANOTHER	2015-J-0448	Motion for MRAP 6(a) stay	11/19/15
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. ARTHUR A. OSBORNE & ANOTHER	2015-P-1661	Mortgage/foreclosure law	12/10/15
US BANK NATIONAL ASSOCIATION VS. JOHN SCHUMACHER & ANOTHER	201-J-0106	Indigency appeal 261/27D	3/15/16
US BANKS NATIONAL ASSOCIATION VS. JOHN SCHUMACHER & ANOTHER	2016-J-0106	Indigency appeal 261/27D	3/15/16
HSBC BANK USA, N.A. VS. PAUL L. NORRIS & ANOTHER	2016-J-0117	Motion for MRAP 6(a) stay	3/17/16
FEDERAL HOME LOAN CORPORATION VS. MARJORIE Y. EVANS	2016-J-0229	GLc 231, s 118, p 1	6/7/16
US BANK TRUST, NA. VS. BETTY A. SWANSTON & ANOTHER	2018-J-0265	Appeal Bond c 239, s 5	6/24/16
FEDERAL HOME LOAN CORPORATION VS. MARJORIE Y. EVANS	2016-J-0350	Appeal Bond c 239, s 5	8/18/16
THE BANK OF NEW YORK MELLON VS. LORI G. CAIRNS	201-J-0362	Motion for MRAP 6(a) stay	8/25/16
LISA Y. BARRON VS. JANET L. JANET L. MONTGOMERY & ANOTHER	2016-J-0369	GLc 231, s 118, p 1	8/29/16
HSBC BANK, USA VS. MYCHELYNE OLIVEIRA & ANOTHER	201-J-0380	Motion for MRAP 6(a) stay	8/31/16
HSBC BANK, USA VS. MYCHELYNE OLIVEIRA & OTHERS	2016-J-0380	Motion for MRAP 6(a) stay	8/31/16
WEBFIRST LLC VS. CAITLIN RYALS	2016-J-0420	Appeal Bond c 239, s 5	9/27/16
LISA Y BARRON VS. JANET L. MONTGOMERY & ANOTHER	2016-J-0433	Appeal Bond c 239, s 5	10/3/16
SANTANDER BANK, N.A. VS. ERIC DOKU & ANOTHER	2016-J-0453	Motion for MRAP 6(a) stay	10/17/16

US. ROF III LEGAL TITLE TRUST 2015-1 VS. BRUCE E. BENT & ANOTHER	2017-J-0032	GLc 231, s 118, p 1	1/23/17
LISA Y. BARRON VS. PAUL MONTGOMERY & ANOTHER	2017-J-0037	Motion for MRAP 6(a) stay	1/26/17
DEUTSCHE BANK NATIONAL TRUST COMPANY VS. CHRISTYA A. RAYMOND & ANOTHER	2017-J-0056	Appeal Bond c 239, s 5	2/6/17
FEDERAL HOME LOAN MORTGAGE CORPORATION VS. MARJORIE Y. EVANS	2017-J-0067	Motion for MRAP 6(a) stay	2/13/17
MIDFIRST BANK VS. MOHAMED A ABDELHAMED & ANOTHERS	2017-J-0098	Motion for MRAP 6(a) stay	3/6/17
SANTANDER BANK, N.A. VS. ERIC DOKU & ANOTHER	2017-J-0124	Motion for MRAP 6(a) stay	3/30/17
LISA Y. BARRON VS. PAUL MONTGOMERY & ANOTHER	2017-J-0134	Motion for MRAP 6(a) stay	4/4/17
LISA Y. BARRON VS. PAUL MONTGOMERY	2017-J-0135	Motion for MRAP 6(a) stay	4/4/17
MRH SUB I, LLC VS. JACKELINE CUCUFATE & ANOTHER	2017-J-0142	Appeal Bond c 239, s 5	4/6/17
MIDFIRT BANK VS. JASMINE ALVAREZ	2017-J-0147	Motion for MRAP 6(a) stay	4/7/17
ARTJAN NICI VS. MARIA NAVEDO	2017-J-0183	Motion for MRAP 6(a) stay	4/28/17
FEDERAL HOME LOAN MORTGAGE ASSOCIATION VS. MARJORIE Y. EVANS	2017-J-0193	Motion for MRAP 6(a) stay	5/4/17
US. BANK NATIONAL ASSOCIATION VS. WILLIAM A. MARKS	2017-J-0206	Appeal Bond c 239, s 5	5/8/17
MRH SUB I, LLC VS. JACKELINE CUCUFATE & ANOTHER	2017-J-0241	Motion to dkt appeal late	5/24/17
US. BANK NATIONAL ASSOCIATION VS. WILLIAM A. MARKS	2017-J-0303	Motion for MRAP 6(a) stay	7/10/17
MRH SUB I, LLC VS. JACKELINE CUCUFATE & ANOTHER	2017-P-0896	Mortgage/foreclosure law	7/10/17
WEBSTER BANK, NA VS. CHRISTINE HILTON	2017-P-0913	Mortgage/foreclosure law	7/12/17
WEBSTER BANK N.A VS. CHRISTINE HILTON	2017-J-0347	Motion for MRAP 6(a) stay	8/3/17
THE BANK OF NEW YORK MELLON VS. EDNA AUSTELL	2017-J-0360	GLc 231, s 118, p 1	8/11/17
WEBSTER BANK, NA VS. CHRISTINE HILTON	2017-J-0363	Appeal Bond c 239, s 5	8/14/17
US. BANK TRUST, NA VS. TRACEY A TOBIN & ANOTHER	2017-J-0424	GLc 231, s 118, p 1	9/19/17
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. SUSAN C. OSBORNE	2017-J-0431	Motion for MRAP 6(a) stay	9/22/17
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