

# Supreme Judicial Court

FOR COMMONWEALTH OF MASSACHUSETTS

No. SJC-12859

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BANK OF NEW YORK MELLON, Appellant

v.

ALTON KING, JR. and TERRI A. MAYES-KING, Appellees

---

SUA SPONTE TRANSFER FROM APPEALS COURT

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**RECORD  
APPENDIX  
VOLUME II OF II**

---

Date: 01/17/2020

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**SUPREME JUDICIAL COURT**  
**THE COMMONWEALTH OF MASSACHUSETTS**  
**DOCKET NO. SJC-12859**  
**RECORD APPENDIX - VOLUME II OF II**

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THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

HOUSING COURT DEPARTMENT

WESTERN DIVISION

DOCKET NO. #19H79SP000190

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THE BANK OF NEW YORK MELLON F/K/A )  
THE BANK OF NEW YORK AS TRUSTEE ON )  
BEHALF OF THE REGISTERED HOLDERS OF )  
ALTERNATIVE LOAN TRUST 2006-J7, )  
MORTGAGE PASS-THROUGH CERTIFICATES )  
SERIES 2006-J7 )  
PLAINTIFF, )  
v. )  
TERRI A MAYES-KING AND ALTON KING )  
DEFENDANTS. )

---

WESTERN DIVISION  
HOUSING COURT  
2019 JUL 15 PM 4:28

**DEFENDANT ALTON KING'S MOTION FOR RELIEF FROM JUDGMENT**

NOW COMES, Alton King, Defendant, by and through counsel in the above-titled matter and, pursuant to Rule 60(b)(6), of the Massachusetts Rules of Civil Procedure, respectfully asks this Honorable Court, to reconsider its decision of July 5, 2019, for good reason(s) as follows pursuant to Rule 60 (b):

(6) any other reason justifying relief from the operation of the judgment..

The defendant moves for relief from the judgment, the court entered its order on July 5, 2019, that the plaintiff has met the burden of the prima facie elements of its claim for possession.

**MORTGAGE WAS “DOOMED TO FAIL”**

**AND THEREFORE REQUIRED LOAN MODIFICATION NOT FORECLOSURE**

Mr. King’s mortgage characteristics make this mortgage squarely covered by the Fremont principles, a predatory loan.

The King mortgage characteristics make this mortgage squarely covered by the Fremont principles, a predatory loan. See *Fremont*. Given this was a subprime mortgage on its face Bank of New York was, therefore, aware that Massachusetts case law is clear that Bank of New York is responsible, therefore, for knowing and addressing the subprime nature of King’s mortgage.

*Fremont* defined the proper repair as loan modification to rectify the otherwise illegal subprime characteristics. Without such repair, a foreclosure is an illegal step. Mr. King was never offered a meaningful loan modification. This left his home subject to a mortgage that was doomed to fail as described by the *Fremont* decision. As Mr. King was lied to by bank about the true value of the property and was induced into a loan that imposed unfair, abusive and misleading loan terms that made his home unaffordable, due to this, the bank never held an interest in 49 Memery Lane, and the mortgage and note were VOID from the very beginning *ab initio*.

The purported mortgage, therefore, violates the spirit of Massachusetts predatory lending law 183C but additionally violates 93A and may violate MGL Chapter 183 section 64 which has no statute of limitations. Nor are the requirements of these statutes subject to a time bar as the mortgage is a key element of Plaintiff’s case (see MGL Chapter 260 section 36.) This loan was “doomed to fail” in violation of Massachusetts fair lending laws, and violated fundamental consumer protections under MGL Chapter 93A. In such a circumstance rather than go into foreclosure, the Massachusetts SJC has ruled (see *Fremont*) that banks should provide a loan modification or refinance.

**WITH NO OFFER AS REQUIRED UNDER MGL CHAPTER 244 SECTION 35B, A NOTICE OF SALE CAN NOT BE PUBLISHED**

The purported auction occurred after the passage of the 2012 statute, MGL Chapter 244 section 35B requires mailing contemporaneously the special loan modification offer with the Right to Cure letter under MGL Chapter 244 section 35A. By avoiding its statutory obligation under 35A, the mortgagee avoided its statutory obligation under 35B and denied Mr. King a critical and legally-required opportunity for a meaningful loan modification *and the mortgagee's own required compliance with the controlling Fremont decision.*

"Certain mortgages" refers to predatory characteristics with which the King mortgage was rife:

"a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on an owner-occupied residential property with 1 or more of the following loan features: (i) an introductory interest rate granted for a period of 3 years or less and such introductory rate is at least 2 per cent lower than the fully indexed rate; (ii) interest-only payments for any period of time, except in the case where the mortgage loan is an open-end home equity line of credit or is a construction loan; (iii) a payment option feature, where any 1 of the payment options is less than principal and interest fully amortized over the life of the loan; (iv) the loan did not require full documentation of income or assets; (v) prepayment penalties that exceed section 56 of chapter 183 or applicable federal law; (vi) the loan was underwritten with a loan-to-value ratio at or above 90 per cent and the ratio of the borrower's debt, including all housing-related and recurring monthly debt, to the borrower's income exceeded 38 per cent; or (vii) the loan was underwritten as a component of a loan transaction, in which the combined loan-to-value ratio exceeded 95 per cent; provided, however, that a loan shall be a certain mortgage loan if, after the performance of reasonable due diligence, a creditor is unable to determine whether the loan has 1 or more of the loan features in clauses (i) to (vii), inclusive

It fits the legal description of a predatory loan not only under the 2012 statute MGL Ch. 244 sec. 35b but also under the predatory loan law of 2004 and was adverse to the homeowner's interest under MGL Ch. 183 sec. 64. If Bank of New York Mellon had complied with its legal necessity under both the mortgage and Massachusetts statutory notification law of the Right to Cure period, and provided Mr. King with the special loan modification offer and procedures and requirements for a commercially reasonable loan modification. Such an offer also would have

satisfied the SJC Fremont decision, which decision is the present law of the land of Massachusetts.

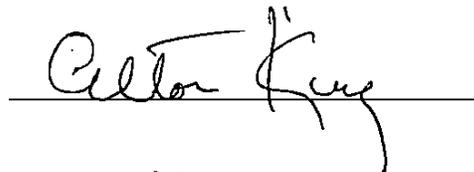
**THE BANK OF NEW YORK FILED AN UNTRUTHFUL AFFIDAVIT IN THE REGISTRY OF DEEDS  
WRONGFULLY PUTTING THE WORLD ON NOTICE FOR LEGAL COMPLIANCE WHERE IT HAD  
NONE**

The explicit wording of MGL Chapter 244 Section 35b requires an affidavit swearing to legal compliance with it to be recorded in the Registry of Deeds prior to the advertising of a foreclosure by sale. In this case, a document named an "affidavit" was recorded in the Registry of Deeds, however, such a document must be based on personal knowledge and certified by an attorney to qualify as an affidavit under 209 CMR 18.21A as of promulgation in 2012.

However, the so-called 244-35B "affidavit" sworn to and recorded in the Hampden Registry of Deeds is not based on personal knowledge and was not certified by an attorney: it swears notice was sent in compliance with the law. It was not. Such an 'affidavit' should be struck as untrue and clearly not on personal knowledge and not certified.

Under MGL Chapter 244 Section 35B, the failure to record an actual affidavit (true), then the advertising of a foreclosure by sale is in direct violation of the legal requirements of compliance with this statute, therefore is an illegal act, it cannot lead to a legal foreclosure.

Respectfully submitted,  
DEFENDANT,  
Alton King



The hearing on the motion will be  
July 25, 2019 at 9:00am  
At Springfield Western Housing Division  
Court

**CERTIFICATE OF SERVICE**

I hereby certify that on this day of July, 2019 I mailed a copy of the forgoing by first class mail to Plaintiff's counsel of record:

Carl Fumarola, Esq.  
Nelson Mullins Riley & Scarborough LLP  
One Post Off Square  
30th Floor  
Boston, MA 02109-2127

Christine Kingston, Esq.  
Nelson Mullins Riley & Scarborough LLP  
One Post Off Square  
30th Floor  
Boston, MA 02109-2127

Marsocci, Esq., David A  
Dolan Connly, PC  
50 Redfield St Suite 202  
Dorchester, MA 02122

Ryan K. O'Hara, Esq.  
Bacon/Wilson, P.C.  
33 State St  
Springfield, MA 01103

  
Alton King

# AFFIDAVIT

Commonwealth of Massachusetts

County of Hampden

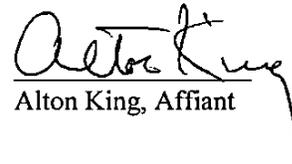
I, Alton King,, being duly sworn, hereby affirm under the pains and penalty of perjury, on this day 15<sup>th</sup>, of July 2019, that:

1. I reside at 49 Memery Lane, Longmeadow, MA 01116.
2. I worked with an Attorney to prepare a defense for my case.
3. I anticipated that the Attorney would file an appearance and represent me.
4. On Thursday, June 27, 2019, the Attorney I was working with informed me that he was not able to represent me.
5. The Attorney did not file an appearance.
6. On July 1, 2019, I requested a continuance to obtain legal counsel.
7. My continuance was denied and Summary Judgment was granted to The Bank of New York Melon.
8. I was originally granted a loan for an addition to my home.
9. A second mortgage was taken out with the understanding that upon completion of the addition both loans would be consolidated.
10. Upon completion of the addition the bank claimed that the value of my home was insufficient to justify the consolidation of the loans even when they held both mortgages.
11. The loan payments began to escalate to the point that my monthly payment was \$13,000.00 a month.
12. I struggled to pay this predatory loan for four years.
13. I sought to modify the loans.
14. The bank agreed to modify one loan and would not consolidate loans as a result the payments were greater than the agreed upon amount.
15. The (NACA) modification agreement which considered income as a basis was supposed to cover both loans, but it only covered one. I later had to work out an additional agreement for the second loan. This caused additional hardship.
16. Bank of America controlled the funds paid to contractors without my consent, and prevented me from renting a portion of my house after structural damage caused by a snowstorm.
17. In April of 2019 I hired Abundant Assets Alliance Group to conduct an independent audit of my mortgage documents. It is my understanding that they have found evidence of possible fraud, forgery and possibility of Robo signed documents.

I swear or affirm tha the above and foregoing representations are true and correct to the best of my information, knowledge, and belief.

July 15, 2019

Date

  
Alton King, Affiant

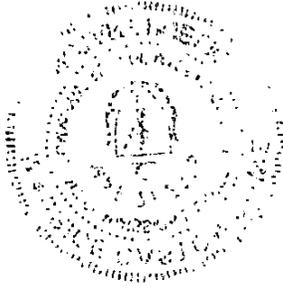
Commonwealth of Massachusetts

County of Hampden

I, the undersigned Notary Public, do hereby affirm that Alton King personally appeared before me on the 15<sup>th</sup> day of July 20 19, and signed the above Affidavit as his free and voluntary act and deed.



  
**MAURICE CASTON POWE**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
March 27, 2026



RECEIVED  
WESTERN DIVISION HOUSING COURT  
JUL 15 1968

WESTERN DIVISION  
HOUSING COURT

2ND JUL 15 PM 4:28

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

BANK OF NEW YORK MELLON f/k/a THE BANK  
OF NEW YORK, AS TRUSTEE ON BEHALF OF  
THE REGISTERED HOLDERS OF ALTERNATIVE  
LOAN TRUST 2006-J7, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2006-J7,

Plaintiff,

v.

TERRI A. MAYES-KING, et al.,

Defendants.

Docket No. 19H79SP000190

2019 JUL 23 AM 10:36  
WESTERN DIVISION  
HOUSING COURT

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR RELIEF FROM  
JUDGMENT**

Plaintiff The Bank of New York Mellon f/k/a The Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 ("Plaintiff") hereby respectfully submits its Opposition to Defendant Alton King Jr.'s ("Defendant") motion for relief from judgment pursuant to Mass. R. Civ. P. 60(b)(6).

As an initial matter, Defendant's motion is procedurally improper because it seeks to interject untimely and new evidence and issues. Defendant never filed a written opposition to Plaintiff's motion for summary judgment, nor did Defendant submit any affidavits or other evidence to rebut Plaintiff's motion. Now, Defendant has purported to file an affidavit with his motion for relief from judgment, and references and relies on such affidavit in support of his motion. Because Defendant cannot introduce new evidence at this late juncture where he never filed an opposition to the summary judgment motion in the first instance, his affidavit must be stricken and the new issues and purported evidence not considered. *See, e.g., Commonwealth v.*

*Gilday*, 409 Mass. 45, 46–47 n.3 (1991) (motion for reconsideration is not “the appropriate place to raise new arguments inspired by a loss before the motion judge”); *Clamp–All Corp. v. Foresta*, 53 Mass. App. Ct. 795, 807 (Mass. App. Ct. 2002) (trial court did not abuse discretion in denying motion for reconsideration where party “failed to offer any substantial reason” why it had not filed affidavit “at the time it filed its original motion”); *Mattapan Med. v. Metropolitan Prop. & Cas. Ins. Co.*, 2000 Mass. App. Div. 197, 198-99 (Mass. App. Div. 2000) (“The plaintiff was not, therefore, entitled to reconsideration of the allowance of Metropolitan’s Rule 56 motion on the basis of additional [] affidavits which obviously could have been obtained earlier.” (citing *Tetrault v. Mahoney, Hawkes & Goldings*, 425 Mass. 456, 458-59 (1997))).

Moreover, Defendant’s motion is improper because it merely argues that the Court got it wrong. Notwithstanding that the Court granted a factually unopposed summary judgment motion and therefore got it right, asserted legal errors do not provide a basis for reconsideration of the Court’s Order. *See, e.g., Bromfield v. Commonwealth*, 400 Mass. 254, 257 (1987) (Massachusetts Rule of Civil Procedure 60(b) “does not provide an avenue for challenging supposed legal errors and ... subsection (6) relief is to be granted only in extraordinary circumstances.”); *Amerada Hess Corp. v. Garabedian*, 416 Mass. 149, 156 (1993) (Rule 60(b) does not provide for “general reconsideration of an order” or a challenge to “alleged legal errors” because those issues are suitably dealt with on appeal); *Jones v. Boykan*, 464 Mass. 285, 291 (2013) (“Rule 60 is not a substitute for the normal appellate process”). Insofar as Defendant believes that the Court got it wrong, his recourse, if any, is on appeal. *See Amerada Hess Corp.*, 416 Mass. at 156.

Even if this Court could consider Defendant’s new arguments and affidavit, which it cannot, they are meritless. Defendant complains about the characteristics of the original Note but fails to apprise the Court that he was not a signatory to the Note; rather, Terri Mayes-King was the

sole signatory to the Note. As he was not a signatory to the Note, Defendant lacks standing to complain about the original terms thereof. *See, e.g., Anctil v. Specialized Loan Servicing LLC*, 2016 WL 70451, at \*1 (D. Mass. Jan. 6, 2016) (“Count III alleges breach of contract. However, Anctil has not identified any contract from which he could derive the right to a loan modification. Nor could he as he is not a signatory to the loan.”); *Sharp v. Deutsche Bank Nat’l Trust Co.*, 2015 WL 4771291, at \*6 (D.N.H. Aug. 11, 2015) (“[W]hile Sharp points out that he was named as a borrower in the mortgage, he does not allege that he was a borrower on the loan and, indeed, the promissory note does not bear his signature. ... Accordingly, the court concludes that Sharp lacks standing to assert a claim under 12 U.S.C. § 2605(f).”); *See also Sullivan v. Kondaur Capital Corp.*, 85 Mass. App. Ct. 202, 205 (2014) (“It is of course true that a nonparty who does not benefit from a contract generally is without standing to enforce rights under it.”); Ex. I to Plaintiff’s Motion for Summary Judgment (Note).

Defendant’s complaint about the terms of the original Note to which he is not a party is also perplexing in light of the fact that the Note was modified four years after its making, via a loan modification agreement on or around December 29, 2010. *See* Ex. B to Plaintiff’s Motion for Summary Judgment (Modification). At that time, the interest rate was permanently re-set to 2% (where the original Note had been adjustable rate), a more than fair rate where Terri Mayes-King’s principal balance had already increased during the intervening four-year period by over \$200,000. *See* Ex. B.<sup>1</sup> Any complaints about the terms of the original Note are now moot in light of the acceptance by Terri Mayes-King of the modified terms.

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<sup>1</sup> Moreover, it is unclear why Defendant contends the original terms were unfair or predatory. The introductory interest rate was 1%, and the Note imposed a cap of 9.950% on interest after the interest rate change dates. *See* Ex. I. To the extent the monthly payments were high, this is because the Note was in the original principal amount of \$1,000,000. In any event, Defendant was not a signatory to the Note.

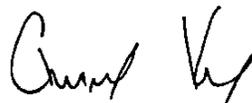
Defendant also contends that Plaintiff violated G.L. c. 244, § 35B by not offering him a modification of the Note. For the same reasons stated *supra*, Defendant lacks standing to raise this challenge as a non-signatory to the Note. This argument also ignores the fact that Plaintiff's predecessor modified the loan in 2010, and that Plaintiff undoubtedly made a good faith effort to avoid foreclosure within the meaning of § 35B by not foreclosing until almost three full years after Terri Mayes-King's default on the Note. *See* Exhibits E (Foreclosure Deed) and J (Notice of Default) to Plaintiff's Motion for Summary Judgment. For the same reasons, Defendant's argument that Plaintiff filed a false affidavit certifying compliance with § 35B is equally meritless.

Because Defendant's motion is procedurally improper and meritless, Plaintiff requests that the Court deny the motion and strike (or refuse to consider) the new evidence and argument submitted therewith.

Respectfully submitted,

Bank of New York Mellon f/k/a The Bank  
of New York, as Trustee on behalf of the  
registered holders of Alternative Loan Trust  
2006-J7, Mortgage Pass-Through  
Certificates, Series 2006-J7,

By their attorneys,



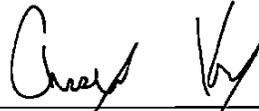
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Carl E. Fumarola (BBO #659019)  
Christine M. Kingston (BBO #682962)  
Nelson Mullins Riley & Scarborough LLP  
One Post Office Square, 30<sup>th</sup> Floor  
Boston, MA 02109  
617-217-4700 (phone)  
[carl.fumarola@nelsonmullins.com](mailto:carl.fumarola@nelsonmullins.com)  
[christine.kingston@nelsonmullins.com](mailto:christine.kingston@nelsonmullins.com)

CERTIFICATE OF SERVICE

I, Christine M. Kingston, certify that on this 22<sup>nd</sup> day of July, 2019, I caused a copy of the foregoing document to be served on all appearing *pro se* parties and counsel of record, as indicated below, by first-class mail and email:

Alton King, Jr. (*pro se*)  
49 Memery Lane  
Longmeadow, MA 01106  
[alkingjr2@comcast.net](mailto:alkingjr2@comcast.net)



---

Christine M. Kingston

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

WESTERN HOUSING COURT  
DOCKET NO: 19H79SP000190

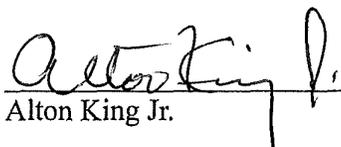
Bank of New York Mellon f/k/a The Bank of New York,	)
As Trustee on Behalf of the Registered Holders of	)
Alternative Loan Trust 2006-J7, Mortgage Pass-Through	)
Certificates 2006-J7,	)
Plaintiff	)
v.	)
Alton King Jr.,	)
Defendant	)

**DEFENDANT’S NOTICE OF APPEAL**

Pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, Defendant, Alton King Jr. (“Defendant”), hereby files and serves this Notice of Appeal. Defendant appeals from the Court’s July 5, 2019 Order and the Court’s July 25, 2019 Order.

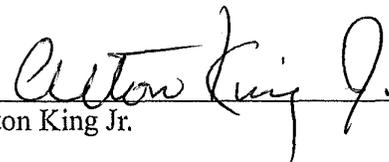
Dated: July 31, 2019

Defendant,

  
 \_\_\_\_\_  
 Alton King Jr.

**CERTIFICATE OF SERVICE**

I, Alton King Jr., hereby certify that this 31<sup>st</sup> day of July 2019, I served a true copy of the foregoing on Plaintiff’s counsel of record via first class mail:

  
 \_\_\_\_\_  
 Alton King Jr.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

WESTERN HOUSING COURT  
DOCKET NO: 19H79SP000190

Bank of New York Mellon f/k/a The Bank of New York,	)
As Trustee on Behalf of the Registered Holders of	)
Alternative Loan Trust 2006-J7, Mortgage Pass-Through	)
Certificates 2006-J7,	)
Plaintiff	)
v.	)
Alton King Jr.,	)
Defendant	)
	)

**DEFENDANT’S MOTION TO WAIVE APPEAL BOND**

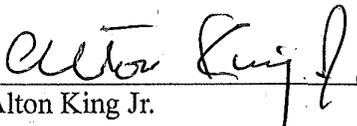
Now comes the Defendant, Alton King, Jr. (“King” or “Defendant”), and requests that this Court waive any applicable appeal bond related to use and occupancy since the time of foreclosure because the Defendant is without the necessary finances to pay such bond, which would otherwise deprive the Defendant of his right to appeal. Defendant further requests this Court to waive continued monthly use and occupancy payments going forward and during the pendency of the appeal pursuant to *Bank of New York Mellon v. Deidre A. Dundon*, (2019-J-0257), a true copy of which 6/28/2019 Order and 7/17/2019 Clarifying Order are attached hereto as Exhibit A. See Affidavit of Indigency and Supplement of Alton King Jr., attached hereto and incorporated herein by reference.

The Defendant meets the M.G.L. c. 239, § 5 appeal bond waiver standard in that he is indigent within the meaning of M.G.L. c. 261, § 27A, and Defendant has non-frivolous defenses in this case, specifically related to the *Pinti* notice, a record document at Plaintiff’s Summary Judgment, Fumarola Exhibit J, which demonstrates Plaintiff’s failure to strictly and/or substantially comply with Paragraph 22 of the King Mortgage, which causes the subject foreclosure and title derived therefrom to be void - eliminating Plaintiff’s standing, an issue that can also be raised for the first time on appeal. The *Pinti* notice set forth at Plaintiff’s said Exhibit J, specifically states under Your Rights: “You have the right to reinstate after acceleration of your account and **commencement of foreclosure proceedings.**” (emphasis added). This mirrors the

invalidated notice pursuant to *Pinti* with incredible likeness as it clearly misrepresents the Defendant's rights in asserting King would have a chance to reinstate after initiation of foreclosure proceedings, proceedings that do not actually exist in a non-judicial foreclosure jurisdiction such as Massachusetts. A Massachusetts Housing Justice recently found that this exact notice from Select Portfolio Servicing with the exact language quoted above "did not comply, **either strictly or substantially**", pursuant to *Pinti*. (See Order attached hereto as *Exhibit B*). This alone demonstrates an appealable issue that cannot be characterized as frivolous in any sense of the term.

Dated: July 31, 2019

Defendant,

  
Alton King Jr.

#### CERTIFICATE OF SERVICE

I, Alton King Jr., hereby certify that this 31<sup>st</sup> day of July 2019, I served a true copy of the foregoing on Plaintiff's counsel of record via first class mail:

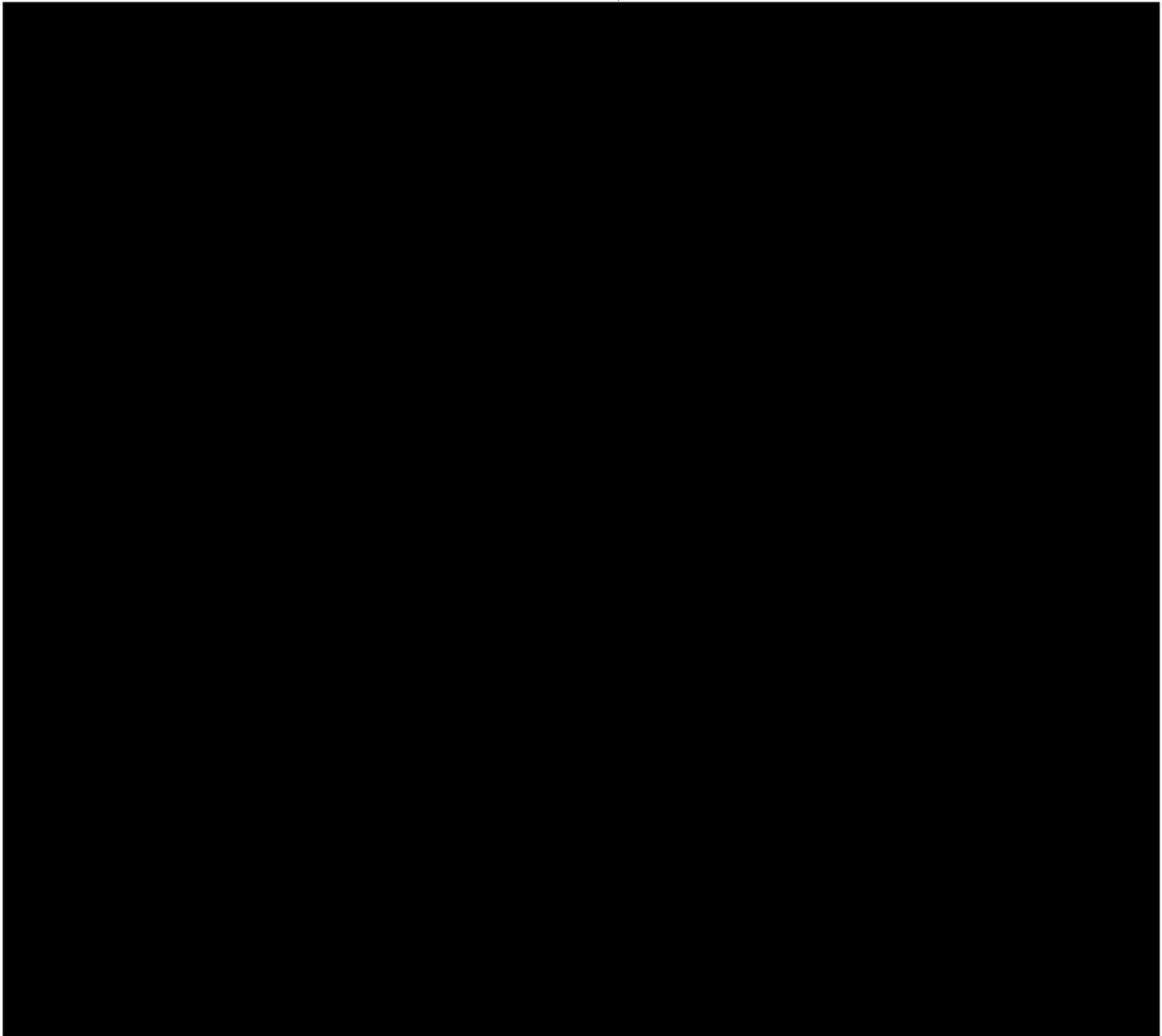
  
Alton King Jr.

Commonwealth of Massachusetts

# AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION  
OR STATE PAYMENT OF FEES & COSTS

(Impounded / Redacted)

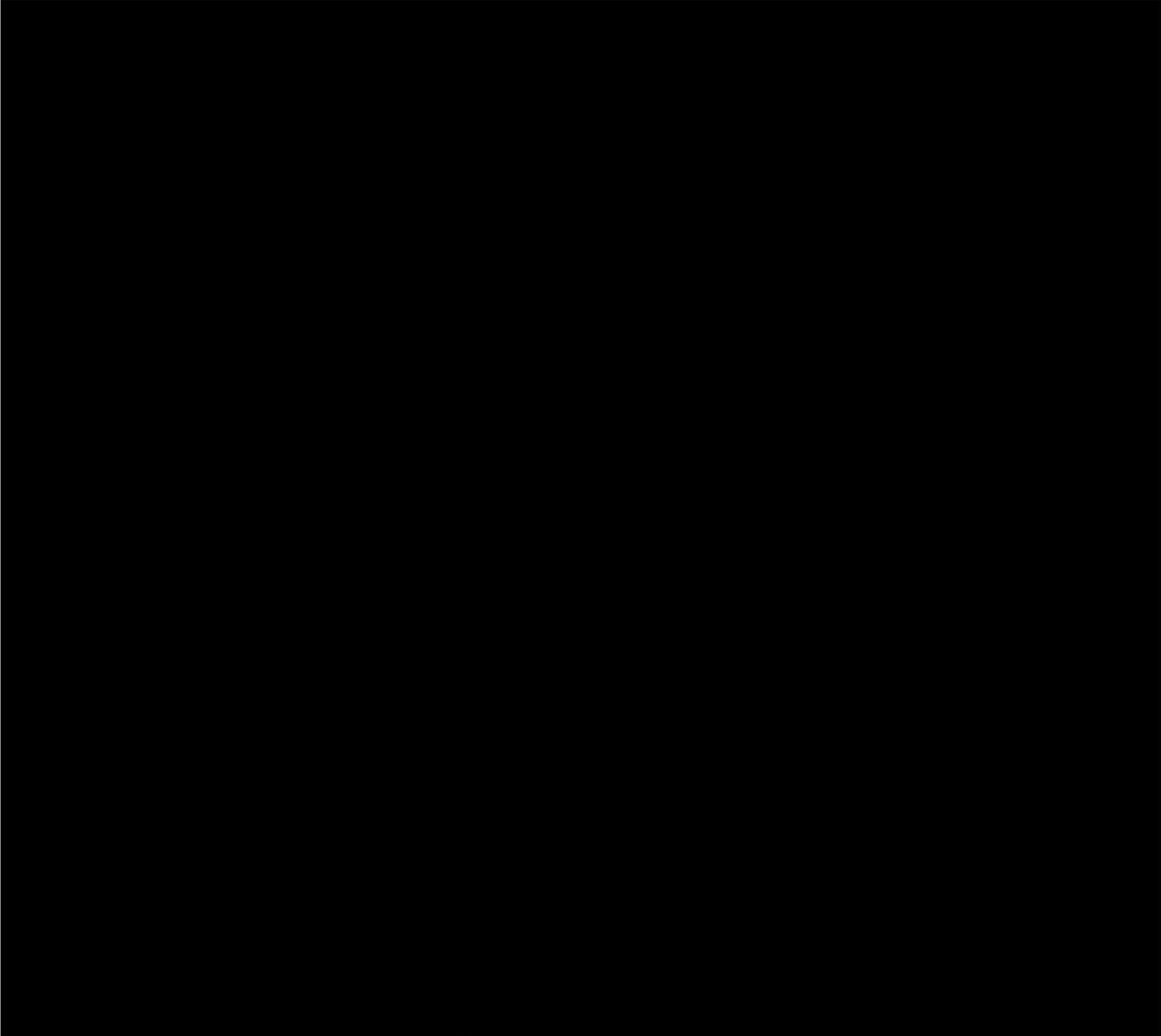


IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

(Impounded / Redacted)

**SECTION 2:** (Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): (Check all that apply and, in any "\$ \_\_\_\_" blank, indicate your best guess as to the cost, if known.)



7/30/2019

x Allen King Jr.

By order of the Supreme Judicial Court, all information in this affidavit is **CONFIDENTIAL**. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003.  
Fillable PDF created August 2013.

RA 20

**SUPPLEMENT TO AFFIDAVIT OF INDIGENCY**

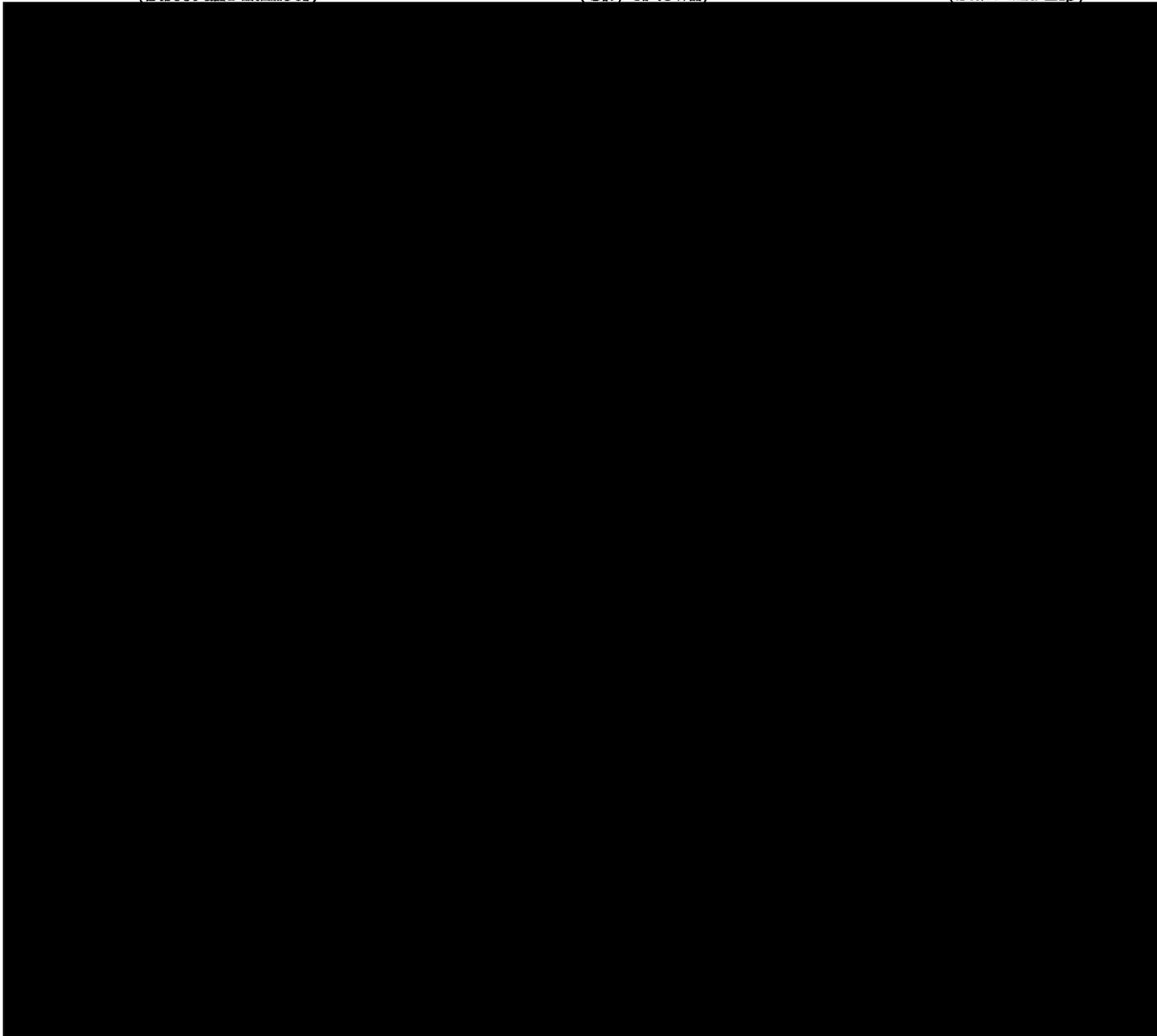
AND REQUEST FOR WAIVER, SUBSTITUTION  
OR STATE PAYMENT OF FEES & COSTS

*(Note: If you checked (C) on the AFFIDAVIT OF INDIGENCY, you must complete this form.)*

Housing Court Dept. Western Div 194795P000190  
Court Case Name and Number (if known)

Name of applicant: Allen King Jr

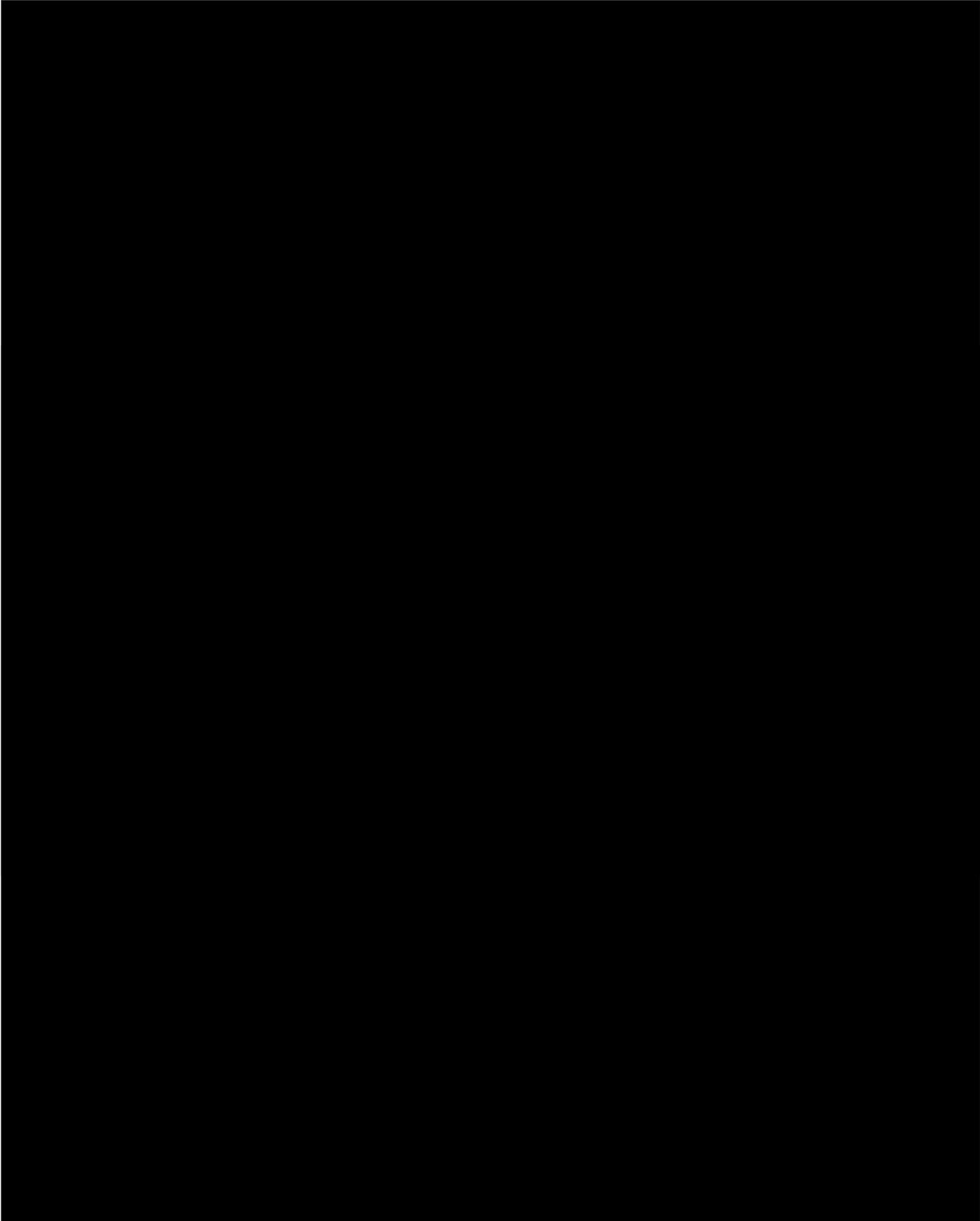
Address: 49 Memory Ln Loughmeadow MA 01106  
(Street and number) (City or town) (State and Zip)



(Impounded / Redacted)

RA 21

(Impounded / Redacted)



(Impounded / Redacted)

4. ASSETS



Address: 49 Memory Ln  
City: Longmeadow State: MA Zip Code: 01106  
Date signed: 7/30/2019

**By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.**

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003.  
Fillable PDF created August 2013.

RA 23



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**APPEALS COURT**  
**Single Justice**  
Case Docket

**THE BANK OF NEW YORK MELLON vs. DEIDRE A. DUNDON**  
2019-J-0257

CASE HEADER			
Case Status	Disposed: Case Closed	Status Date	07/17/2019
Nature	Appeal Bond c 239, s 5	Entry Date	06/04/2019
Pet Role Below	Defendant	Single Justice	PJR
Brief Status		Brief Due	
Case Type	Civil	Lower Ct Number	
Lower Court	Central Housing Court	Lower Ct Judge	Diana H. Horan, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
The Bank of New York Mellon Plaintiff/Respondent	<u>Kevin Polansky</u> , Esquire <u>Colin Barrett</u> , Esquire <u>Christine Kingston</u> , Esquire
Deidre A. Dundon Pro Se Defendant/Petitioner	



DOCKET ENTRIES		
Entry Date	Paper	Entry Text
06/04/2019	#1	Appeal entered pursuant to M.G.L.c. 239, § 5 with attachments.
06/06/2019	#2	Copy of Affidavit of indigency, received from Central Housing Court. (IMPOUNDED)
06/06/2019		ORDER: A memorandum in support of the appeal, if any, is due on or before June 12, 2019. An opposition, if any, is due on or before June 19, 2019. (Rubin, J.) *Notice/Attest/Horan, J
06/06/2019		Notice to counsel for hearing before Rubin, J. on Thursday 6/20/19 at 11:00am in Courtroom 4
06/12/2019	#3	Memorandum in support of waiver of appeal bond filed by Deidre A. Dundon.
06/12/2019	#4	Appendix filed by Deidre A. Dundon.
06/19/2019	#5	Response to paper #3, filed by The Bank of New York Mellon.
06/19/2019	#6	Appendix filed for The Bank of New York Mellon by Attorney Kevin Polansky.

**DOCKET ENTRIES**

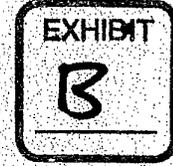
06/19/2019 #7	Notice of appearance filed for The Bank of New York Mellon by Attorney Christine Kingston.
06/20/2019	Hearing held.
06/20/2019 #8	Appearance of Attorney Christine Kingston for The Bank of New York Mellon.
06/20/2019 #9	Appearance of Deidre A. Dundon
06/28/2019	<p>ORDER: The defendant seeks review of the order denying her motion to waive the appeal bond. It is timely because it was filed "within 6 days after receiving notice of the decision on the motion to waive the bond." G.L. c. 239, § 5(g). There is no dispute about defendant's indigency. The question is whether she has a non-frivolous defense. "[T]he determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner and that the party claiming it is wrong as matter of law. Frivolousness imports futility - not a 'prayer of a chance.' Pires v. Commonwealth, 373 Mass. 829, 838 (1977)." Home Sav. Bank of Am. FSB v. Camillo, 45 Mass. App. Ct. 910, 911 (1998). One defense she raises is whether the Obsolete Mortgage Statute, G. L. c. 260, § 33, renders the mortgage unenforceable because the acceleration of the balance due under the note changed the maturity date of the mortgage. This is an open question in our appellate courts that has been litigated in some lower courts and in the federal district court. Although I express no view on its merits, it is not frivolous. This argument, however, was raised for the first time in the motion for reconsideration. The motion judge had discretion to consider it, but if he did not do so, it is waived. The defendant argues that the judge did consider it in the motion for reconsideration. The judge's order in that motion in its entirety reads: "Denied after hearing as no new evidence or matter that could not have been plead in a timely manner. Def arguments belong in an appeal of this court's judgment." The first sentence standing alone indicates that the motion was denied due to the timeliness of the arguments. But the order was denied after a hearing, and the judge wrote that the defendants' arguments should properly be raised on appeal, which might, the defendant argues, be viewed to mean implicitly that he was deciding them on their merits. This reading might be bolstered by the judge's statement in the order denying the motion seeking waiver of the bond that "The Defendant did not present arguments in defense at the time of the Summary Judgment hearing that resulted in judgment entering against her. She now both through a Motion to Reconsider and this Motion attempts to argue that there are genuine issues of material fact present such that Plaintiff was not entitled to judgment in its favor. Even ignoring the timing of such arguments, the defendant offers no admissible evidence to support her claims. Therefore, a Bond Order is warranted." Of course, no evidence aside from the mortgage itself is necessary to determine the legal claim concerning the Obsolete Mortgage statute. Again, the question is not whether the defendant has a winning</p>

**DOCKET ENTRIES**

07/01/2019 #10	argument that the judge ruled on the merits. It is whether she has one worthy of presentation to an appellate court. That standard is met here. The May 23, 2019 order denying the motion to waive the bond is therefore vacated. (Rubin, J.). *Notice/Attest/Horan, J
07/11/2019 #11	Motion to reconsider filed for The Bank of New York Mellon by Attorney Christine Kingston.
07/17/2019	Opposition to Plaintiff's Motion for Reconsideration filed by Deidre A. Dundon.
07/23/2019 #12	ORDER: The plaintiff The Bank of New York Mellon moves for reconsideration and/or clarification of my June 28, 2019 order vacating a Housing Court order that required the defendant to pay an appeal bond of \$8,400 and monthly use and occupancy payments of \$1,050. The plaintiff's motion is granted to the extent it seeks clarification of my order. My order vacated the entire Housing Court order: The defendant is required to pay neither the appeal bond nor the periodic use and occupancy payments. To the extent the plaintiff's motion seeks reconsideration, it is denied. The plaintiff argues that, under G. L. c. 239, § 5 (e), even when the appeal bond is waived, the Housing Court is required to order the defendant to pay "monthly payments pending appeal." This misreads the statute. § 5 (e) states, "The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits." The statute does not require the payment of "monthly payments pending appeal," but only "rent which shall become due," and it forbids the court from ordering any other payments. Here, the parties have no tenancy relationship and the defendant does not owe rent. G. L. c. 239, § 5 (e) therefore forbade the Housing Court from ordering periodic payments pending appeal. This interpretation is bolstered by G. L. c. 239, § 6, which provides: "If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff." This, not § 5 (e), is the statute that sometimes requires the Housing Court to order periodic payments pending appeal in cases like this one, where the defendant is a foreclosed-on entity. But those payments are a "condition of the bond." Because there is no bond in this case, § 6 is inapplicable. To the extent the plaintiff's motion seeks clarification, it is granted as described above. In all other respects it is denied. So Ordered. (Rubin, J). *Notice/Attest/Horan, J
07/24/2019	Notice of appeal filed for The Bank of New York Mellon by Attorney Christine Kingston.
	Copy of paper #12 to counsel.

COMMONWEALTH OF MASSACHUSETT  
NORTHEAST HOUSING COURT

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U.S. BANK

Plaintiff

- v. -

No. 18-SP-1260

CONSTANTINE TASLIS

Defendant

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ORDER

Upon the authority and reasoning of Pinti (2015), I hold that inclusion of the phrase "after acceleration of your account and commencement of foreclosure proceedings" (where "commencement of foreclosure proceedings" was not intended and did not in fact occur) in the "150 Day Right to Cure Your Mortgage Default" pre-foreclosure notice by SPS Select Portfolio Servicing Inc., dated January 8, 2016, upon which the plaintiff relies, did not comply, either strictly or substantially, with the requirements of Paragraph 22 of the underlying Mortgage, such that the plaintiff cannot prevail in its summary process action for possession of the subject residential premises.

I do not reach the Thompson (2019) and other arguments raised by the parties in their cross-motions for summary judgment.

Enter judgment dismissing the complaint.

A handwritten signature in cursive script, appearing to read "David D. Kerman".

---

David D. Kerman  
Associate Justice

July 22, 2019

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

BANK OF NEW YORK MELLON f/k/a THE BANK  
OF NEW YORK, AS TRUSTEE ON BEHALF OF  
THE REGISTERED HOLDERS OF ALTERNATIVE  
LOAN TRUST 2006-J7, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2006-J7,

Plaintiff,

v.

TERRI A. MAYES-KING, et al.,

Defendants.

Docket No. 19H79SP000190

**PLAINTIFF'S MOTION FOR AN APPEAL BOND AND OPPOSITION TO**  
**DEFENDANT'S MOTION TO WAIVE BOND**  
**(Memorandum Incorporated)**

Plaintiff The Bank of New York Mellon f/k/a The Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 ("Plaintiff") hereby moves this Court, pursuant to G.L. c. 239, §§ 5(c) and 6, for an appeal bond as a condition of Defendant Alton King, Jr. ("Defendant") taking an appeal from the final judgment in this action granting Plaintiff possession of the subject property. Plaintiff respectfully requests that the Court also order the Defendant to make monthly payments during the pendency of the appeal to provide sufficient security to Plaintiff while the appeal is pending. Not only is the appeal bond required by law, but it is also necessary to protect Plaintiff's interests and is in the interests of justice.

**BRIEF BACKGROUND**

Defendant is the former owner of property located at 49 Memery Lane, Longmeadow, Massachusetts (the "Property"). The sole obligor on the subject note, Terri Mayes-King, defaulted

in October 2015. After she failed to cure her default, Plaintiff lawfully foreclosed on August 24, 2018, and took title to the Property as the highest bidder at foreclosure.

Plaintiff moved for summary judgment herein on its claim for possession. King did not file any opposition thereto. *See* Docket. Although Defendant testified at the motion hearing in opposition to the motion, he did not present any discernible defense to the validity of the foreclosure, or Plaintiff's title and its right to possession, instead raising arguments concerning the conditions of the Property. The Court granted Plaintiff's motion for summary judgment for possession, noting that "[t]he defendant failed to file any written opposition and really has no challenge to the plaintiff's claim for possession." *See* July 5, 2019 Order. Judgment entered in favor of Plaintiff on July 5, 2019. *See* Docket. Defendant moved to vacate the judgment, but the motion was denied. *See id.* Defendant thereafter filed a notice of appeal from the judgment, along with a motion to waive the bond. *See id.*

#### **EVIDENCE OF FAIR RENTAL VALUE OF PROPERTY**

As relevant here, the Property has been assessed by the Town of Longmeadow at \$1,205,500. *See* Exhibit 1 – *Tax Assessment*. Plaintiff purchased the Property at foreclosure for \$1,282,069. *See id.* The Property consists of 7,876 square feet of living area (18,930 gross area), five bedrooms, five full bathrooms, and one half-bathroom, fifteen rooms total, and sits on a little over one acre of land. *See id.*<sup>1</sup>

At the time of the default on the loan, the monthly contractual payments were **\$4,618.77**. *See* Exhibit 2 – *Notice of Default*.

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<sup>1</sup> Based on the tax assessment and tax rate, Plaintiff calculates the taxes at approximately \$29,040 per year or \$2,400 per month. According to the tax assessor, the Property has an assessed value of \$1,205,500 and is taxed at a rate of \$24.09 per \$1,000 for FY2019 ( $\$1,205.5 \times \$24.09 = \$29,040$ ). *See* <http://gis.vgsi.com/longmeadowma/>

## ARGUMENT & AUTHORITIES

Massachusetts General Laws Chapter 239, § 5(c) requires a defendant appealing an adverse judgment in a summary process case to “give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court.” G.L. c. 239, § 5(c). Specifically, it provides:

Except as provided in section 6, the defendant shall, before any appeal under this section is allowed from a judgment of the ... district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court.

G.L. c. 239, § 5(c). Under Section 5, the mandatory bond requirement may only be waived upon specific findings that the defendants are indigent and have non-frivolous defenses on appeal. *See* G.L. c. 239, § 5(e); *Tamber v. Desrochers*, 45 Mass. App. Ct. 234, 235 (1998); *Matrix Fin. Servs. Corp. v. Long*, 2012 Mass. App. Unpub. LEXIS 273, at \*3 (Mass. App. Ct. March 8, 2012) (unless defendant meets his burden to make those two showings, bond requirement applies).

In a case where the plaintiff is seeking possession following a foreclosure sale, as is the case here, “the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff.” G.L. c. 239, § 6. *See also* *Matrix Fin. Servs. Corp.*, 2012 Mass. App. Unpub. LEXIS 273, at \*2 & n.3 (“Section 6 of c. 239 provides that, in a summary process action brought after a purchase at a foreclosure sale, the elements that may be considered in establishing the amount of the bond include all costs and a reasonable amount as rent from the date of purchase until the delivery of possession, as well as all damage and loss that may be sustained by the withholding of possession and by injury to the property during the withholding period.”). The trial court has discretion to

determine the appropriate amount of the bond under Section 6. *See Matrix Fin. Servs. Corp.*, 2012 Mass. App. Unpub. LEXIS 273, at \*2. Because Plaintiff seeks possession of the Property subsequent to the foreclosure of the mortgage, G.L. c. 239, § 6 applies to the calculation of the bond amount.

Thus, because the Defendant is a person unlawfully in possession of the Property following a lawful foreclosure that occurred in 2018, and Plaintiff is rightfully seeking and was awarded possession of the same, Defendant is *required* under G.L. c. 239, §§ 5(c) and 6 to pay an appeal bond to provide Plaintiff sufficient sureties during the pendency of the appeal.

Defendant has requested waiver of the bond on the ground that he is indigent. To the extent Defendant qualifies as indigent, he has not demonstrated non-frivolous defenses on appeal. The sole issue he identifies in his motion to waive the bond is that, according to him, the Paragraph 22 notice sent by Plaintiff's agent fails to strictly comply therewith under *Pinti v. Emigrant Mort. Co.*, 472 Mass. 226, 243 (2015). However, it cannot be disputed that Defendant never raised this issue in this case. He never filed an opposition to the summary judgment motion at all, much less one raising this issue. Nor did he testify to this issue at the summary judgment hearing. As such, he cannot claim a non-frivolous defense on appeal that he never raised in the trial court in the first instance.

Thus, Plaintiff opposes the waiver of the bond on the basis that Defendant has no non-frivolous defense on appeal. As for the amount of the bond, Plaintiff seeks a bond from the date of foreclosure (August 24, 2018) to present calculated on the basis of the monthly mortgage payments at the time of default on the loan, which was \$4,618.77. *See Ex. 2. See also* G.L. c. 239, § 6. At twelve months from foreclosure at \$4,618.77 per month, Plaintiff seeks a bond in the amount of \$55,425.25.

This bond is not only required pursuant to the aforesaid law but also necessary to protect Plaintiff from the financial losses it has already sustained and will further sustain during the Defendant's appeal. Further, Plaintiff has not received a single cent from Defendant or obligor Terri Mayes-King since the October 2015 default on the loan, and has not been able to capitalize on the substantial amount it paid to purchase the Property at the foreclosure sale.

Further, Plaintiff requests that this Court order the Defendant to make monthly payments of \$4,618.77 directly to Plaintiff as continuing security during the pendency of their appeal, beginning in September 2019 and continuing each month thereafter. *See Novastar Mortg., Inc. v. Saffran*, 2013 Mass. App. Unpub. LEXIS 326, at \*3 n.2 (Mass. App. Ct. March 20, 2013) (“[C]ourts routinely order that use and occupancy payments be made directly to the landlord or the property owner pending appeal.”). Absent ongoing security payments, Plaintiff will be harmed in the interim.

In the event the Court waives Defendant's appeal bond pursuant to Section 5(e), which such waiver Plaintiff opposes, then Plaintiff still requests that the Court order Defendant to make monthly payments of \$4,618.77 to Plaintiff pending the appeal. Section 5(e) states that “[t]he court **shall require** any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver.” G.L. c. 239, § 5(e).

Defendant relies on a recent Single Justice opinion to argue that this portion of Section 5(e) does not apply in a post-foreclosure case, and that if the Court waives his bond then it cannot order him to make *any* appeal bond payments. However, the Single Justice opinion to which Defendant cites is pending an appeal to a full panel of the Appeals Court. *See* Exhibit A to Defendant's Motion. Thus, not only is the Single Justice opinion not binding on this Court, it is not final.

In addition, that Single Justice opinion is contrary to appellate law. As the Appeals Court has held, if a defendant in a post-foreclosure case seeks an appeal bond waiver pursuant to G.L. c. 239, § 5(e) (a statute which typically applies to bona fide tenants), then that defendant cannot argue that the monthly payment requirement under the statute does not apply:

We are not persuaded that the order instituting periodic payments during the pendency of the appeal was improper. *See* G.L. c. 239, §§ 5(e) & 6; *Home Sav. Bank of Am., FSB v. Camillo*, 45 Mass.App.Ct. 910, 911 (1998). Nor are we persuaded of the merit of Saffran's contention that it was error to order that the periodic payments be made directly to Novastar. If, as Saffran argues, Novastar was limited to the remedies under § 6 (insofar as it governs summary process actions arising after a foreclosure), as a matter of fairness, he also would have been limited (and thus required to post an appeal bond). Only by resort to § 5(e) was Saffran relieved of that statutory requirement. Having had the benefit of the § 5(e) procedure, Saffran cannot argue that the burdensome portion of that provision (requiring installment payments for use and occupancy after the date of bond waiver, pending appeal) was inapplicable.

*Saffran*, 2013 WL 1131271, at \*1.

Thus, every other trial court and Single Justice to consider the issue has ruled that, where the bond is waived in a post-foreclosure case pursuant to Section 5(e), periodic monthly payments pending appeal are required under Section 5(e). Plaintiff encloses herewith multiple decisions to this effect, including from First Justice Fein of this Court and former First Justice Winik of the Eastern Housing Court.

WHEREFORE, Plaintiff respectfully requests that this Court establish an appeal bond in the amount of \$55,425.24 or other reasonable amount as determined by the Court, order the Defendant to make monthly use and occupancy payments of \$4,618.77 pending the appeal, and enter any other and different relief that the Court deems just and proper.

[Signatures on Next Page]

Respectfully submitted,

Bank of New York Mellon f/k/a The Bank  
of New York, as Trustee on behalf of the  
registered holders of Alternative Loan Trust  
2006-J7, Mortgage Pass-Through  
Certificates, Series 2006-J7,

By their attorneys,



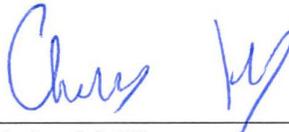
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Carl E. Fumarola (BBO #659019)  
Christine M. Kingston (BBO #682962)  
Nelson Mullins Riley & Scarborough LLP  
One Post Office Square, 30<sup>th</sup> Floor  
Boston, MA 02109  
617-217-4700 (phone)  
[carl.fumarola@nelsonmullins.com](mailto:carl.fumarola@nelsonmullins.com)  
[christine.kingston@nelsonmullins.com](mailto:christine.kingston@nelsonmullins.com)

CERTIFICATE OF SERVICE

I, Christine M. Kingston, certify that on this 12<sup>th</sup> day of August, 2019, I caused a copy of the foregoing document to be served on all appearing *pro se* parties and counsel of record, as indicated below, by hand:

Alton King, Jr. (*pro se*)  
49 Memery Lane  
Longmeadow, MA 01106  
[alkingjr2@comcast.net](mailto:alkingjr2@comcast.net)



---

Christine M. Kingston

# EXHIBIT 1

**49 MEMERY LN**

**Location** 49 MEMERY LN

**Mblu** 503/ 9/ 43/ /

**Acct#**

**Owner** THE BANK OF NEW YORK  
MELLON

**Assessment** \$1,205,500

**PID** 6149

**Building Count** 1

**Current Value**

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$974,500	\$231,000	\$1,205,500

**Owner of Record**

**Owner** THE BANK OF NEW YORK MELLON  
**Co-Owner**  
**Address** 3217 SOUTH DECKER LAKE DR  
SALT LAKE CITY, UT 84119

**Sale Price** \$1,282,069  
**Certificate**  
**Book & Page** 22404/6  
**Sale Date** 10/16/2018  
**Instrument** 1L

**Ownership History**

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
THE BANK OF NEW YORK MELLON	\$1,282,069		22404/6	1L	10/16/2018
KING, ALTON JR	\$225,000		12845/0005	1P	01/02/2003
MCCULLOUGH, RICHARD A	\$1		6351/0254		12/31/1986
MELLON THE BANK OF NEW YORK	\$0		/		

**Future Owners**

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
THE BANK OF NEW YORK MELLON	\$1,282,069		22404/6	1L	10/16/2018

**Building Information**

**Building 1 : Section 1**

**Year Built:** 2002  
**Living Area:** 7,876  
**Replacement Cost:** \$1,329,004

**Building Photo**

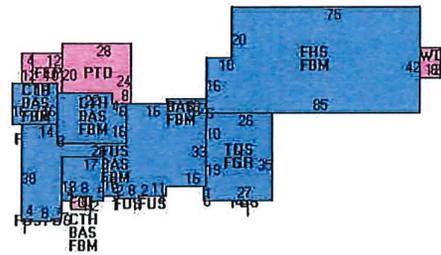
**Building Percent** 73  
**Good:**  
**Replacement Cost**  
**Less Depreciation:** \$970,200

Building Attributes	
Field	Description
Style	Colonial
Model	Residential
Grade/Appeal	Luxurious
Stories:	2 Stories
Occupancy	1
Exterior Wall Cvr	Brick Veneer
Exterior Wall Cvr	Vinyl Siding
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall Cvr	Drywall/Sheet
Interior Wall Cvr	
Interior Flr Cvr	Hardwood
Interior Flr Cvr	Carpet
Heat Fuel	Gas
Heat Type:	ForcedWarmAir
AC Type:	Central
Total Bedrooms:	5 Bedrooms
Total Bthrms:	5
Total Half Baths:	1
Total Xtra Fixtrs:	
Total Rooms:	15
Bath Style:	Average
Kitchen Style:	Average
Num Kitchens	01
Usrflid 107	



(http://images.vgsi.com/photos2/LongmeadowMAPPhotos/\00\00\85\71.jpg)

**Building Layout**



(http://images.vgsi.com/photos2/LongmeadowMAPPhotos/Sketch)

Building Sub-Areas (sq ft)		Legend	
Code	Description	Gross Area	Living Area
BAS	First Floor	3,148	3,148
FUS	Upper Story	2,692	2,692
FHS	Half Story	2,698	1,349
TQS	Three Quarter Story	916	687
CTH	Cathedral Ceiling	1,114	0
FBM	Basement, Finished	6,518	0
FEP	Porch, Enclosed	152	0
FGR	Garage	916	0
FOP	Porch, Open	40	0
FST	Utility, Storage	48	0
PTO	Patio	592	0
WDK	Deck, Wood	96	0
		18,930	7,876



**Extra Features**

Extra Features	Legend
----------------	--------

Code	Description	Size	Value	Bldg #
FPL	Fireplace Prefab	2.00 UNITS	\$2,200	1
FPL1	Brick Fireplace	1.00 UNITS	\$2,100	1

**Land**

**Land Use**

Use Code 1010  
 Description Single Family  
 Zone RA1  
 Alt Land Appr No  
 Category

**Land Line Valuation**

Size (Acres) 1.03  
 Frontage 0  
 Depth 0  
 Assessed Value \$231,000

**Outbuildings**

Outbuildings	Legend
No Data for Outbuildings	

**Valuation History**

Assessment			
Valuation Year	Improvements	Land	Total
2017	\$1,035,200	\$317,700	\$1,352,900
2016	\$969,100	\$296,700	\$1,265,800
2015	\$982,300	\$293,700	\$1,276,000

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# EXHIBIT 2

- This is an important notice concerning your right to live in your home. Have it translated at once.
- Esta carta explica sus derechos legales para permanecer en su propiedad de vivienda. Por favor traduzca esta notificación inmediatamente.
- Este é um aviso importante em relação ao seu direito de morar na sua residência. Por favor, tem traduzido imediatamente.
- C'est une notification importante concernant votre droit de vivre chez vous. Faites-la traduire immédiatement.
- 这是一则关于您居住权的重要通知, 请儘快安排翻译。

### 90-Day Right to Cure Your Mortgage Default

June 29, 2017

BY FIRST-CLASS MAIL AND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

TERRI A MAYES-KING  
ALTON KING JR  
49 MEMERY LANE  
LONGMEADOW, MA 01106

RE: 49 MEMERY LANE, LONGMEADOW, MA 01106; loan [REDACTED] with Select Portfolio Servicing, Inc. (SPS), as servicer for The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 (c/o SPS, PO Box 65250 Salt Lake City, UT 84165-0250) (Mortgagee); Mortgage Loan Originator: ComUnity Lending, Incorporated, a California Corporation;

To TERRI A MAYES-KING, ALTON KING JR:

We are contacting you because you did not make your monthly loan payment(s) due on 10/01/2015, 11/01/2015, 12/01/2015, 01/01/2016, 02/01/2016, 03/01/2016, 04/01/2016, 05/01/2016, 06/01/2016, 07/01/2016, 08/01/2016, 09/01/2016, 10/01/2016, 11/01/2016, 12/01/2016, 01/01/2017, 02/01/2017, 03/01/2017, 04/01/2017, 05/01/2017, 06/01/2017 to SPS. You must pay the past due amount of \$165,432.07 on or before September 27, 2017, which is 90 days from the date of this notice. The past due amount on the date of this notice is specified below:

- \$4,618.77 Principal & Interest due on 10/01/2015; \$4,618.77 Principal & Interest due on 11/01/2015; \$4,618.77 Principal & Interest due on 12/01/2015; \$4,618.77 Principal & Interest due on 01/01/2016; \$4,618.77 Principal & Interest due on 02/01/2016; \$4,618.77 Principal & Interest due on 03/01/2016; \$4,618.77 Principal & Interest due on 04/01/2016; \$4,618.77 Principal & Interest due on 05/01/2016; \$4,618.77 Principal & Interest due on 06/01/2016; \$4,618.77 Principal & Interest due on 07/01/2016; \$4,618.77 Principal & Interest due on 08/01/2016; \$4,618.77 Principal & Interest due on 09/01/2016;
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- \$70,837.90 Outstanding Escrow Balance;



If you pay the past due amount, and any additional monthly payments, late charges or fees that may become due between the date of this notice and the date when you make your payment, your account will be considered up-to-date and you can continue to make your regular monthly payments.

Make your payment directly to:

Select Portfolio Servicing, Inc.  
Attn: Cashiering Department  
PO Box 65450 Salt Lake City, UT 84165-0450

Please consider the following:

- You should contact the Homeownership Preservation Foundation (888-995-HOPE) to speak with counselors who can provide assistance and may be able to help you work with your lender to avoid foreclosure.
- If you are a MassHousing borrower, you may also contact MassHousing (888-843-6423) to determine if you are eligible for additional assistance. There may be other homeownership assistance available through your lender or servicer;
- You may also contact the Division of Banks (617-956-1500) or visit [www.mass.gov/foreclosures](http://www.mass.gov/foreclosures) to find a foreclosure prevention program near you;
- After September 27, 2017, you can still avoid foreclosure by paying the total past due amount before a foreclosure sale takes place. Depending on the terms of the loan, there may also be other ways to avoid foreclosure, such as selling your property, refinancing your loan, or voluntarily transferring ownership of the property to The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7.

**If you do not pay the total past due amount of \$165,432.07 and any additional payments that may become due by September 27, 2017, you may be evicted from your home after a foreclosure sale. If The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 forecloses on this property, it means the mortgagee or a new buyer will take over the ownership of your home.**

If you have questions, or disagree with the calculation of your past due balance, please contact SPS at 800-635-9698 or PO Box 65277 Salt Lake City, UT 84165-0277.

Sincerely,

Lindsey Clissold  
Vice President, Quality Control Department  
Select Portfolio Servicing, Inc.

Enclosed with this notice, there may be additional important disclosures related to applicable laws and requirements that you should carefully review.

Supreme Judicial Court and Appeals Court of Massachusetts																																																																																		
Public Case Information																																																																																		
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**DOCKET ENTRIES**

ANNOUNCEMENT: The Appeals Court encourages interested parties to file amicus curiae ("friend of the court") briefs in Federal National Mortgage Association v. Michael Anthony Branch, 2019-P-0004. Any party not directly involved in this case, but that has an interest or opinion about this case pending before the court may file an amicus brief in accordance with Rule 17. All amicus submissions shall comply with Rules 17, 19, and 20 of the Massachusetts Rules of Appellate Procedure. The issues before the Court in this case are:1. In a defendant's appeal from a judgment in an action for the possession of land after foreclosure of a mortgage or in an action for possession of land after purchase, if the defendant is indigent and has any defense which is not frivolous, may a judge of the Superior Court, District Court, or Housing Court, or a single justice of the Appeals Court waive all or any portion of the appeal bond required under G. L. c. 239, § 6?2. With respect to such an appeal, may a judge or justice order periodic payments after judgment has entered as a condition of the bond?3. If the answer to question two is in the affirmative, and the judge or justice determines that periodic payments shall be required as a condition of the bond, may the judge or justice order that the periodic payments be made directly to the plaintiff?4. When a judge or justice sets the conditions of the bond required by G. L. c. 239, § 6, which party bears the burden of proving the value to be utilized in determining the "reasonable amount as rent of the land"?5. In determining the "reasonable amount as rent of the land," under G. L. c. 239, § 6, must the judge or justice consider only the fair-market rental value of the property, or may the judge or justice also consider a defendant's ability to pay and financial hardship? . \*Notice.

01/29/2019 #3

CORRECTED ORDER AND REPORT OF CASE: This case came before me on a request of the defendant, Anthony Michael Branch, for review of the amount of periodic payments required by the Housing Court after the entry of judgment in a summary process case. See G. L. c. 239, §§ 5(f) & (g).Background. After a judgment of possession entered in favor of the plaintiff, Federal National Mortgage Association, on March 20, 2018, Branch filed a request to waive the appeal bond. See G. L. c. 239, §§ 5 & 6. He seeks appellate review of orders of two Housing Court judges regarding his requests. In an order dated June 15, 2018, the first judge found Branch had demonstrated both that he was indigent and that he had nonfrivolous claims or defenses to present on appeal. Accordingly, the judge waived the requirement of posting an appeal bond. However, the judge determined that Branch should make monthly use and occupancy payments to the plaintiff pending appeal. Based on the fair market rental value of the premises, the judge ordered Branch to make monthly payments of \$1,800 starting July 1, 2018, with an additional one-time payment of \$3,600 for the months of May and June.After some confusion in the Housing Court regarding Branch's request for review of the first judge's order, a second

## DOCKET ENTRIES

judge held a hearing and entered an order dated October 26, 2018, that Branch pay \$1,800 per month, as reasonable use and occupancy, starting on November 1, 2018. Again, Branch sought review in this court. I agree with the determination of both judges that Branch is indigent and has nonfrivolous issues to present on appeal. The only issue before me is whether the monthly use and occupancy payment should be reduced or vacated in its entirety. Branch argues that such periodic payments are not authorized under G. L. c. 239, § 6, which governs appeal bonds in mortgage foreclosure cases. While there is little case law on this point, this court has observed that while § 6 "spells out what damages a bond shall protect in the case of a summary process action arising out of a mortgage foreclosure," "[i]t does not cause the procedures of § 5 to be inapplicable in such cases." *Home Sav. Bank of Am., FSB v. Camillo*, 45 Mass. App. Ct. 910, 911 (1998). Branch has presented photographic evidence of the decrepitude of certain parts of the premises that cause me to question whether \$1,800 is the fair rental value of the premises. It is unclear whether he presented this evidence to the Housing Court judges before they made their determinations. However, whether use and occupancy is set at \$1,800 or somewhat less, Branch will be unable to pay, which will lead to his eviction and dismissal of his appeal. Concluding that the single justice has the authority to reduce monthly use and occupancy payments for financial hardship, see *Kargman v. Dustin*, 5 Mass. App. Ct. 101, 110-111 (1977), I consider payment of an amount that allows him to remain on the premises while providing some relief to the plaintiff to be an appropriate resolution at this stage. Interim order. The Housing Court's bond order dated June 15, 2018, is vacated. The order dated October 29, 2018, waiving the bond and establishing use and occupancy payments, is amended as follows: Commencing January 2, 2019, Branch shall pay make periodic payments of \$500 per month during the pendency of his appeal from the judgment against him. Payments shall be by money order, bank check, or other certified funds payable to the Clerk of the Housing Court and shall be delivered to the Clerk's office on the first day of each month. If the first of the month falls on a Saturday, Sunday, or holiday, payment is due on the next business day when the Housing Court is open. Failure to make the payments required by this order may result in the dismissal of the appeal. See G. L. c. 239, § 5(h). The plaintiff or defendant may seek to modify this interim order by motion follow determination of the questions that I am reporting below. Report. Pursuant to Mass. R. Civ. P. 64 and Appeals Court Rule 2:01, I report the following questions the Appeals Court: Question one. In a defendant's appeal from a judgment in an action for the possession of land after foreclosure of a mortgage or in an action for possession of land after purchase, if the defendant is indigent and has any defense which is not frivolous, may a judge of

DOCKET ENTRIES	
	<p>the Superior Court, District Court, or Housing Court, or a single justice of the Appeals Court waive all or any portion of the appeal bond required under G. L. c. 239, § 6?Question two. With respect to such an appeal, may a judge or justice order periodic payments after judgment has entered as a condition of the bond?Question three. If the answer to question two is in the affirmative, and the judge or justice determines that periodic payments shall be required as a condition of the bond, may the judge or justice order that the periodic payments be made directly to the plaintiff?Question four. When a judge or justice sets the conditions of the bond required by G. L. c. 239, § 6, which party bears the burden of proving the value to be utilized in determining the "reasonable amount as rent of the land"?Question five. In determining the "reasonable amount as rent of the land," under G. L. c. 239, § 6, must the judge or justice consider only the fair-market rental value of the property, or may the judge or justice also consider a defendant's ability to pay and financial hardship?The Appeals Court clerk's office is directed to assemble the record in 18-J-542 and to send notice to the parties of assembly of the record. Further, the clerk's office shall docket the appeal without the need for further payment of fees. The plaintiff shall be deemed the appellant for briefing purposes. (Massing, J.) (Entered: January 29, 2019, nunc pro tunc to December 31, 2019) *Notice/Attest/Sherring, J.</p>
02/06/2019 #4	<p>Motion of Appellant to extend date for filing brief and appendix filed for Federal National Mortgage Association by Attorney Matthew Carbone.</p>
02/11/2019	<p>RE#4: Allowed to 03/29/2019. Notice sent.</p>
02/28/2019 #5	<p>MOTION to Dismiss filed for Federal National Mortgage Association by Attorney Matthew Carbone.</p>
03/11/2019 #6	<p>Memorandum in Opposition to Plaintiffs Motion to dismiss appeal with supporting affidavit filed by Anthony Michael Branch.</p>
03/22/2019 #7	<p>Motion to correct name filed by Anthony Michael Branch.</p>
03/25/2019	<p>RE#5: The motion to dismiss is denied without prejudice. To the extent that the motion to dismiss can be considered an appellant's motion for voluntary dismissal that should ordinarily be granted[,] see Doe v. Sex Offender Registry Bd., 429 Mass. 654, 656 (1999), the procedural posture and issues presented in this case present an exception to that general rule. This matter originates from the defendant's request for review of periodic payments required by the Housing Court. A single justice of this court (Massing, J.) vacated the Housing Court's bond order and amended a Housing Court order establishing use and occupancy payments. The single justice further reported certain questions about the case to a panel of the Appeals Court and deemed the plaintiff the appellant for briefing purposes. Thus, this is substantially different from an ordinary appellant's motion for voluntary dismissal because the defendant is the party that initiated review by the Appeals Court and is the party that continues to press issues regarding the appeal bond and use and</p>

DOCKET ENTRIES	
	occupancy issues. Further, the defendant contends that motion to dismiss was brought in an effort to evade appellate review after the single justice reported questions and the court solicited amicus briefs in the case. See id. at 657 n.2 (motions for voluntary dismissal should be denied where brought for the purpose of evading judicial review[.]). Considering that the change in circumstance described in the plaintiff's motion may give the defendant a greater incentive to provide the court with a developed record, it is ordered that the defendant is now deemed the appellant for briefing purposes and the plaintiff is deemed the appellee. The plaintiff may raise in its appellee brief any argument that the appeal is moot and that the court should not exercise its discretion to answer the reported questions. The defendant's appellant brief and record appendix are due on or before 4/22/2019. The order requiring the defendant to make use and occupancy payments is vacated as requested by the plaintiff and as the defendant takes no position with respect to that request for relief. (Massing, J.). *Notice/Attest/
03/25/2019	RE#6: See action on paper #5. *Notice.
03/25/2019	RE#7: Allowed. *Notice.
04/05/2019 #8	Motion of Appellant to extend date for filing brief and appendix filed by Anthony Michael Branch.
04/05/2019 #9	Motion to return use and occupancy payments filed by Anthony Michael Branch.
04/12/2019	RE#8: Allowed to 06/06/2019. Notice sent.
04/12/2019	RE#9: Denied without prejudice to renewal in the Housing Court in the first instance. *Notice/Attest.
05/02/2019 #10	Motion to Docket the Lower Court Record filed by Anthony Michael Branch.
05/09/2019 #11	RESPONSE to Page #10 filed for Federal National Mortgage Association by Attorney Matthew Carbone.
05/09/2019 #12	RESPONSE to P#11 filed by Anthony Michael Branch.
05/20/2019	RE#10: The within is treated as a motion to expand the record on appeal and is referred to the panel designated to decide this appeal. To facilitate the panel's review of the motion, the defendant may include the proposed materials in his record appendix. *Notice
05/20/2019	RE#11: Referred to the panel designated to decide this appeal. *Notice
05/20/2019	RE#12: Referred to the panel designated to decide this appeal. *Notice
06/03/2019 #13	Motion of Appellant to extend date for filing brief and appendix filed by Anthony Michael Branch.
06/05/2019	RE#13: Allowed to 07/19/2019. Notice sent.
07/17/2019 #14	Motion of Appellant to extend date for filing brief and appendix filed by Anthony Michael Branch.
07/17/2019	RE#14: Allowed to 07/24/2019. Notice sent.
07/24/2019 #15	Status Report filed by Anthony Michael Branch.
07/25/2019	RE#15: Treating the within as a motion to extend the brief due date, the request is allowed to 8/7/19. Appellant is to note that as a pro se party, he is

DOCKET ENTRIES	
	permitted to file his brief and appendix in paper form. *Notice.
08/08/2019 #16	[Entry vacated as document be transferred to 18-P-283 (By the Court 8/9/19)] Status Report (IMPOUNDED) filed by Anthony Michael Branch.

[< Top](#)

As of 08/09/2019 20:00  
(2019-08-11 18:30:20)

© 2004 RSI

HAMPDEN, ss.

WESTERN HOUSING COURT  
CIVIL ACTION NO.: 17H79SP005094

CITIBANK N.A., AS SUCCESSOR IN INTEREST  
TO TRUSTEE TO U.S. BANK NATIONAL  
ASSOCIATION, AS TRUSTEE FOR MASTR  
ASSET SECURITIZATION TRUST 2006-2,  
MORTGAGE PASSTHROUGH CERTIFICATES,  
SERIES 2006-2,

Plaintiff,

v.

RAYMOND E. SHEA, JR.,

Defendant.

*12/19/18*  
*After hearing &*  
*now consideration*  
*of the parties' submissions,*  
*plaintiff's motion*  
*& debt is waived. The bond for payment*  
*for appeal & allowed bond on the 1st*  
*& for turning over money*  
*during the pendency of the appeal*  
*for the plaintiff (one thousand dollars)*  
*& occupancy of the premises.*  
*The order is further*  
*to be ordered that*  
*step be taken to*  
*perfect his*  
*appeal. The*  
*clerk's office*  
*can provide*  
*information*  
*about the*  
*appeal process.*  
*Jan 27*  
*Jude*

**PLAINTIFF'S MOTION FOR AN APPEAL BOND**  
**(Memorandum Incorporated)**

Plaintiff Citibank N.A., as successor-in-interest to Trustee to U.S. Bank National Association, as Trustee for MASTR Asset Securitization Trust 2006-2, Mortgage Pass-Through Certificates, Series 2006-2 ("Plaintiff") hereby moves this Court, pursuant to G.L. c. 239, §§ 5(c) and 6, for an appeal bond as a condition of Defendant Raymond E. Shea, Jr. ("Defendant") taking an appeal from the final judgment in this action granting Plaintiff possession of the subject property and monetary damages in the form of use and occupancy. Plaintiff respectfully requests that the Court also order the Defendant to make monthly payments during the pendency of the appeal to provide sufficient security to Plaintiff while the appeal is pending. Not only is the appeal bond required by law, but it is also necessary to protect Plaintiff's interests and is in the interests of justice.

*CC: ACM*  
*7/20/18*

*Information*  
*appeal process.*  
*Jan 27*  
*Jude*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT  
EASTERN DIVISION  
SUMMARY PROCESS  
NO. 17H84SP004508

**BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS  
TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-  
BACKED CERTIFICATES, SERIES 2006-26,**

Plaintiff

VS.

**CYNTHIA CARPIN, PAULETTE McCARTHY a/k/a PAULETTE M. BIRDEN,  
DONALD P. CARPIN, and WILLIAMS CAPRIN a/k/a WILLIAM CARPIN,**  
Defendants

**SUMMARY PROCESS APPEAL BOND ORDER**

Defendant Cynthia Carpin filed a **Notice of Appeal** from a judgment for possession entered against him on February 14, 2018. The facts of this case are set forth in the Court's **Memorandum of Decision on Motion for Summary Judgement**, Winik, J., dated February 13, 2018.<sup>1</sup>

Defendant Cynthia Carpin filed a **Motion to Waive Appeal Bond and Other Costs**, which was argued on March 15 2018.<sup>2</sup>

Because the defendant is the former mortgagor and owner of the property at issue in this case, and because this is a post-foreclosure eviction in which the plaintiff has obtained a judgment to recover possession of the foreclosed property, the conditions that

---

<sup>1</sup> Judgment entered for the plaintiff on its claim for possession and damages in the amount of \$19,873.00 (unpaid use and occupancy) plus costs and interest.

<sup>2</sup> Cynthia Carpin was without authority to file a notice of appeal on behalf of the other defendants. Accordingly, the Notice of Appeal is stricken as to defendants Paulette McCarthy, Paulette Birden, Donald Carpin and Cynee Carpin-Williams. Accordingly, the appeal and appeal bond motion shall be considered only with respect to defendant Cynthia Carpin.

attach to the appeal bond are governed by G.L. c. 239, §6 rather than by G.L. c. 239, §5. Section 5(c) provides that the bond setting provisions of that section apply to summary process appeals “except as provided by section 6 . . .” Section 6 provides that the provisions of Section 6 apply to the condition of an appeal bond “if the action is for the possession of land after foreclosure of a mortgage thereon . . .” Section 6 is consistent with the old common law rule that tenancies terminated automatically by operation of law upon foreclosure.<sup>3</sup> However, amendments to G.L. c. 186, §§ 13 and 13A, and the enactment of G.L. c. 186A, changed the common law with respect to the post-foreclosure status of residential tenancies. Tenancies under a lease and tenancies at will now survive foreclosure.

In light of these statutory changes, I conclude that the bond provisions of G.L. c. 239, § 5 govern in all cases where a tenancy survived foreclosure and the tenant takes an appeal from a summary process judgment granting possession to the post-foreclosure owner.

However, the defendant was not a tenant at the time the plaintiff acquired title to the premises upon foreclosure, or at any time thereafter. I conclude that where the plaintiff acquires the premises upon foreclosure and then brings an action to recover possession of premises against the former mortgagor and those occupying the premises as part of the mortgagor’s household, who did not possess any right to occupy the premises as tenants at the time of the foreclosure, the provisions of G.L. c. 239, §6 govern the conditions of the appeal bond.

G.L. c. 239, §6 provides in relevant part that:

“ . . . the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of

---

<sup>3</sup> Under the common law a foreclosure extinguished all rights of the mortgagor and his grantees in the property covered by the mortgage. A mortgagor could not convey better title than he possessed, and a residential tenant of the mortgagor was subject to the same possessory limitations as the mortgagor. See *Levin v. Century Indemnity Co.*, 279 Mass 256 (1932); *Winnisimmet Trust, Inc. V. Libby*, 247 Mass. 560 (1924). The common law rule with respect to residential tenancies was that after a foreclosure “the mortgagor and those claiming under him become tenants at sufferance of the mortgagee . . .” *Cunningham v. Davis*, 175 Mass. 213 (1900). A tenant who entered into a lease with the mortgagor subsequent to the giving of the mortgage came within the definition of “those claiming under [the mortgagor].” *Allen v. Chapman*, 168 Mass. 442 (1897). Therefore in situations where a tenancy came into existence after the mortgagor granted a mortgage to the mortgagee, the foreclosure on that mortgage terminated that tenancy by operation of law. *Federal National Mortgage Association v. Therrian*, 42 Mass.App.Ct. 523, 524 (1997), citing *International Paper Co. v. Priscilla Co.*, 281 Mass. 22, 29 (1932).

a reasonable amount as rent of the land from the day that the purchaser obtained title to the premises until the delivery of possession thereof to him, together with all damage and loss which he may sustain by withholding of possession of the land or tenement demanded, and by any injury done thereto during such withholding with all costs.

I read this provision of Section 6 to require that the bond include “a reasonable amount of rent” from the date the plaintiff obtained title if the final judgment included a money judgment for unpaid rent. In addition, under Section 6 (as is the case under Section 5), the plaintiff is entitled to a bond order that conditions the entry of the appeal upon the defendant’s payment of a reasonable amount for the use and occupancy of the premises from the date of judgment and for each month thereafter during the pendency of the appeal.

Section 6 does not have a specific provision whereby an indigent defendant can move to waive the appeal bond. However, I rule that the bond waiver provisions set forth in Section 5 apply to Section 6 bonds. See, *Home Savings Bank of America, FSB v. Camillo*, 45 Mass. App. Ct. 910 (1998). Under the provisions of G.L. c. 239, § 5 (and Section 6), the Court shall waive the appeal bond only if it is satisfied that the defendant is indigent and that he has a defense or issue to present on appeal that is not frivolous. See *Tamber v. Desrochers*, 45 Mass. App. Ct. 234 (1998).

After reviewing the financial affidavit submitted by the defendant Cynthia Carpin, I conclude that she is indigent within the meaning of G.L. c. 261, §§27A-G. I further find that the defendant had identified issues she intends to raise on appeal that are not frivolous. Therefore, the defendant’s motion to waive the appeal bond is **ALLOWED**.

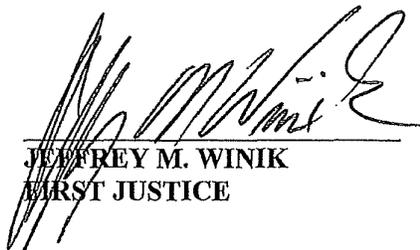
Under G.L. c. 239, §§ 5A and 6, the court must establish the fair rental value of the premises, and as a condition of maintaining the appeal the court must require that the defendant pay all intervening rent in an amount set by the court. I have previously determined upon summary judgment that the fair rental value of the premises for use and occupation is \$2,338.00 per month.

In accordance with the requirements of G.L. c. 239, ¶5 and 6, it is **ORDERED** that as a condition of maintaining her appeal defendant Cynthia Carpin shall, commencing on April 15, 2015, and on or before the fifteenth day of each month thereafter, pay the plaintiff **\$2,338.00** for the monthly use and occupation of the premises during the pendency of the appeal. The defendant must make each monthly payment in the form of a money order

payable to *Specialized Loan Servicing, Inc.*, and mailed to the plaintiff's attorney *Christine Kingston, Esq., One Post Office Square, 30<sup>th</sup> Floor, Boston, MA 02109.*

If during the pendency of this appeal the defendant fails to make the required monthly payments for the use and occupancy of the unit as is set forth in this order, then upon motion the plaintiff may request that the appeal be dismissed and that execution issue.

**SO ORDERED.**



JEFFREY M. WINIK  
FIRST JUSTICE

March 19, 2018

cc: Christine Kingston, Esq.  
Cynthia Carpin

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

BANK OF NEW YORK MELLON f/k/a THE BANK  
OF NEW YORK, AS TRUSTEE ON BEHALF OF  
THE REGISTERED HOLDERS OF ALTERNATIVE  
LOAN TRUST 2006-J7, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2006-J7,

Plaintiff,

v.

TERRI A. MAYES-KING, et al.,

Defendants.

Docket No. 19H79SP000190

**AFFIDAVIT OF JAMES COOMBS**

I, James Coombs, do hereby state as follows:

1. I have personal knowledge of the matters set forth in this Affidavit.
2. I am over the age of 18, of sound mind, and able to make this Affidavit.
3. I am a realtor employed at Coldwell Banker Residential Brokerage, 136 Dwight Road, Longmeadow, Massachusetts.
4. I am a licensed real estate broker in the Commonwealth of Massachusetts. My license number is 009522760.
5. I have been a licensed real estate broker in the Commonwealth of Massachusetts since 2011. I have considerable experience and expertise in both sales and rentals in and around Longmeadow, Massachusetts.
6. On September 5, 2019, I inspected the interior and exterior of the property located at 49 Memery Lane, Longmeadow, Massachusetts (the "Property").

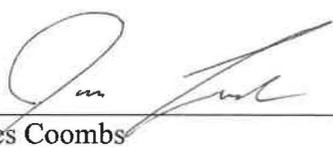
7. Based upon my interior inspection of the Property, the property is a good condition single family colonial style home with 7540 sq ft of living area. Property consists of five bedrooms, five bathrooms, and a half bath. Property also has an indoor basketball court, in-law style apartment, and three car attached garage.

8. During my interior and exterior inspection of the Property, I observed that the Property is in good to excellent condition with only extremely minor cosmetic needs in some areas. I observed no conditions at the Property that in my opinion and experience as a real estate broker would constitute a threat or danger to safety.

9. In addition to my inspection of the Property, I have also viewed comparable properties in the area listed for sale and rent.

10. Based upon my exterior and interior inspection of the Property, and a comparison to other similar properties in the area, which I have enclosed herewith, I believe that the fair market rental value of the Property is approximately \$5,000 per month.

Signed under the pains and penalties of perjury, this 12 day of September 2019.

  
James Coombs



**MLS # 72518933 - Active  
Rental - Single Family**

**995 Frank Smith Rd  
Longmeadow, MA 01106-2962  
Hampden County**  
Unit Level: 1  
Grade School: **Wolf Swamp**  
Middle School: **Glenbrook**  
High School: **LHS**  
Outdoor Space Available:  
Directions: **Close to Wolf Swamp School**

Rent: **\$2,850**

Total Rooms: **8**  
Bedrooms: **4**  
Bathrooms: **2f 1h**  
Master Bath: **Yes**  
Fireplaces: **1**

◀ 1 of 30 ▶

**Remarks**

**Rare Opportunity to Rent this BEAUTIFUL 4 Bedroom 2.5 bath Colonial Home. This Well Cared for Home Offers Wood Floors Throughout, Beautiful and Spacious Kitchen with Granite Counters and Access to the Backyard Private Deck, Living Room with Handsome Fireplace, First floor Laundry and a 2 Car Attached Garage. The 2nd Level Offers 4 Generous Size Bedrooms and 2 Updated Baths. Other Features includes Central Air and Lead Certificate. This Home is Close to all that Longmeadow Has to Offer!!!!**

**Property Information**

Approx. Living Area: <b>2,232 Sq. Ft.</b>	Approx. Lot Size: <b>30,000 Sq. Ft.</b>	Parking Spaces: <b>4</b>
Living Area Includes:	Heating: <b>Gas</b>	Garage Spaces: <b>2 Attached</b>
Living Area Source: <b>Field Card</b>	Air Cond: <b>Yes</b>	
Living Area Disclosures:		
Disclosures:		

**Rental Information**

For Sale: <b>No</b>	First Mon Rent Req'd: <b>Yes</b>	Last Mon Rent Req'd: <b>Yes</b>
Association: <b>No</b>	Security Deposit Req'd: <b>Yes/\$2,850</b>	Lease Terms:
Date Available: <b>Now</b>	Rent Terms: <b>Lease</b>	Term of Rental (months): <b>12+</b>
Date Avail. Note:	List Bkge. Fee Req. from Tenant: <b>No</b>	Insurance Req'd: <b>Yes</b>
References Req'd: <b>Yes</b>		Smoking Allowed: <b>No</b>
Pets Allowed: <b>No</b>		

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Flooring - Wood
Dining Room:	1		Flooring - Wood
Kitchen:	1		Countertops - Stone/Granite/Solid
Master Bedroom:	2		Bathroom - Full, Closet, Flooring - Wood
Bedroom 2:	2		Closet, Flooring - Wood
Bedroom 3:	2		Closet, Flooring - Wood
Bedroom 4:	2		Closet, Flooring - Wood
Bath 1:	1		Bathroom - Half
Bath 2:	2		Bathroom - Full
Bath 3:	2		Bathroom - Full
Laundry:	1		-

**Features**

Appliances: **Range, Dishwasher, Refrigerator**  
 Area Amenities: **Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Golf Course, Highway Access, House of Worship, Private School, Public School, University**  
 Basement: **Yes Full**  
 Beach - Miles to:  
 Exterior Features: **Deck**  
 Interior Bldg Feat:  
 Rent Fee Includes: **Occupancy Only**  
 Waterfront: **No**  
 Water View: **No**

**Other Property Info**

Lead Paint: **Certified Treated**  
 Disclosure Declaration: **No**  
 Elevator: **No**  
 Furnished: **No**  
 Laundry Features: **In Building**  
 Pin #: **M:0330 B:0282 L:0057**  
 UFFI:  
 Year Built: **1977** Source: **Public Record**  
 Year Built Description: **Approximate**  
 Year Round: **Yes**

**Office/Agent Information**

Listing Office: **Keller Williams Realty** (413) 565-5478  
 Listing Agent: **Paul Zingarelli** (413) 246-9982  
 Team Member(s):  
 Sale Office:  
 Sale Agent:  
 Listing Agreement Type: **Exclusive Right to Rent**  
 Entry Only: **No**

**Compensation**

Cooperating Compensation: **half**

RA 55

Showing: **Lock Box, Appointment Required, Sign,  Schedule with Showing Time** or call 888-627-2775

Special Showing Instructions:

**Firm Remarks**

**Lease to begin July 15th if available.**

**Market Information**

Listing Date: **6/14/2019**

Days on Market: Property has been on the market for a total of **90** day(s)

Expiration Date:

Original Price: **\$2,850**

Off Market Date:

Listing Market Time: MLS# has been on for **90** day(s)

Office Market Time: Office has listed this property for **90** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:

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**MLS # 72493668 - Active  
Rental - Single Family**

**97 Lynnwood Drive  
Longmeadow, MA 01106  
Hampden County**  
Unit Level: 1  
Grade School: **Blueberry Hill**  
Middle School: **Williams**  
High School: **Longmeadow High**  
Outdoor Space Available: **Yes - Private**  
Handicap Access/Features: **No**  
Directions: **Off Bliss or Williams.**

Rent: **\$3,300**

Total Rooms: **10**  
Bedrooms: **4**  
Bathrooms: **3f 1h**  
Master Bath: **Yes**  
Fireplaces: **1**

◀ 1 of 27 ▶

**Remarks**

**Exceptional 10+ room, 4+bdrm, 3.5 bath home w/ contemporary flair offers 4000 SF finished living area and can work well for combined generation living. Over \$150K spent on quality improvements since 2007. Custom kitchen w/ beautiful details, granite counters, tile back splash, stainless steel appliances, pantry storage, comfy window seat, updated lav & tiled hallway bath. Soft color palette, hardwood floor added in LR, new laminate flooring in 2 BRs (2018), high efficiency furnace, replacement windows, replaced roof and vinyl siding add to amazing value here! Potential home office area and/or in-law area w/ separate entrance, tiled room w/closet, shower bath & 2 lower level carpeted rooms. Top level has BR w/cedar closet. Screened porch, flagstone/cement double patio, IG sprinklers too! Centrally located near schools, shops, town services, parks & athletic fields. Generous yard for sports, gardens, etc. Circular & side driveways offer ample off-street parking. Possible rent to own.**

**Property Information**

Approx. Living Area: **2,680 Sq. Ft.**      Approx. Lot Size: **26,828 Sq. Ft.**      Parking Spaces: **8 Off-Street, Paved Driveway**  
Living Area Includes:      Heating: **Gas, Forced Air**      Garage Spaces: **2 Attached, Garage Door Opener**  
Living Area Source: **Appraiser**      Air Cond: **Yes**  
Living Area Disclosures: **Stated area does not include lower levels and top floor, all together there is over 4000SF**  
Disclosures: **Sprinkler system refurbished in 2017. Intercom/alarm system never used by Sellers, may be inoperable. Top floor BR safe will stay. Basement refrigerator remains. Includes washer and dryer. Owner provides lawn care, spring clean up & fertilization, snow plowing & water/sewer.**

**Rental Information**

For Sale: **Yes**      First Mon Rent Reqd: **Yes**      Last Mon Rent Reqd: **Yes**  
Association: **No**      Security Deposit Reqd: **Yes/\$3,300**      Lease Terms:  
Date Available: **Now**      Rent Terms: **Lease**      Term of Rental (months): **12+**  
Date Avail.Note:  
References Reqd: **Yes**      List Bkge. Fee Req. from Tenant: **No**      Insurance Reqd: **Yes**  
Pets Allowed: **No**      Smoking Allowed: **No**

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	2		Fireplace, Flooring - Hardwood, Sunken
Dining Room:	2		Flooring - Stone/Ceramic Tile
Family Room:	2		Closet/Cabinets - Custom Built, Flooring - Stone/Ceramic Tile
Kitchen:	2		Flooring - Stone/Ceramic Tile, Window(s) - Bay/Bow/Box, Dining Area, Countertops - Stone/Granite/Solid, Countertops - Upgraded, Kitchen Island, Breakfast Bar / Nook, Cabinets - Upgraded, Recessed Lighting, Remodeled, Stainless Steel Appliances
Master Bedroom:	3		Bathroom - Full, Closet - Linen, Flooring - Laminate
Bedroom 2:	3		Flooring - Laminate
Bedroom 3:	3		Flooring - Stone/Ceramic Tile
Bedroom 4:	4		Closet - Cedar
Bedroom 5:	1		Flooring - Vinyl
Bath 1:	3		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 2:	3		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 3:	2		Bathroom - Half, Flooring - Stone/Ceramic Tile
Laundry:	1		-
Bathroom:	1		Bathroom - Full, Flooring - Stone/Ceramic Tile
Other:	B		Flooring - Wall to Wall Carpet
Office:	1		Flooring - Vinyl
Play Room:	B		Flooring - Wall to Wall Carpet

**Features**

Appliances: **Wall Oven, Dishwasher, Disposal, Microwave, Refrigerator, Washer, Dryer**  
Area Amenities: **Shopping, Tennis Court, Park, Walk/Jog Trails, Golf Course, Medical Facility, Bike Path, Highway Access, House of Worship, Private School, Public School, University**  
Basement: **Yes Partially Finished, Interior Access, Concrete Floor**  
Beach - Miles to:  
Exterior Features: **Porch - Enclosed, Patio, Gutters, Sprinkler System, Screens, Fenced Yard**  
Interior Bldg Feat: **Cable TV Available**  
Rent Fee Includes: **Water, Refuse Removal**  
Waterfront: **No**

**Other Property Info**

Adult Community: **No**  
Lead Paint: **Unknown**  
Disclosure Declaration: **No**  
Elevator: **No**  
Facing Direction: **West**  
Laundry Features: **In Building**  
Pin #:

RA 57

UFFI: **Unknown**  
Year Built: **1958**  
Source:  
Year Built Description:  
**Actual**  
Year Round: **Yes**

**Office/Agent Information**

Listing Office: **William Raveis R.E. & Home Services** [i] (413) 565-2111

Listing Agent: **Suzanne White Group** [i] (413) 530-7363

Team Member(s): **Suzanne S. White** [i] [e] (413) 530-7363

Sale Office:

Sale Agent:

Listing Agreement Type: **Exclusive Right to Rent**

Entry Only: **No**

Showing: **Appointment Required**, [i] **Schedule with Showing Time** or call 888-627-2775

Special Showing Instructions: **Please remove shoes upon entering.**

**Compensation**

Cooperating Compensation: **half month**

**Market Information**

Listing Date: **5/3/2019**

Days on Market: Property has been on the market for a total of **132** day(s)

Expiration Date:

Original Price: **\$3,000**

Off Market Date:

Listing Market Time: MLS# has been on for **132** day(s)

Office Market Time: Office has listed this property for **132** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:



**MLS # 72474559 - Rented  
Rental - Single Family**

**33 Osceola Lane - Unit 0  
Longmeadow, MA 01106  
Hampden County**

Unit Level: **1**  
Grade School: **Blueberry**  
Middle School: **Williams**  
High School: **LHS**  
Outdoor Space Available: **Yes - Private**  
Directions: **Off Hopkins Place near Lynnwood.**

Rent: **\$2,800**  
Rented Price: **\$2,800**  
Total Rooms: **9**  
Bedrooms: **4**  
Bathrooms: **2f 1h**  
Master Bath: **Yes**  
Fireplaces: **3**

1 of 14

**Remarks**

**Spacious and comfortable Colonial in the center of town in Blueberry School District. All schools, Bliss Park, and shopping area are one mile away or less. Beautifully remodeled kitchen, master bathroom and half bath. Stainless steel appliances in kitchen with granite counters. 4 Spacious bedrooms with ample closets, One of the 3 fireplaces (living room) is decorative only. Local Landlord requires first, last, and security deposit for qualified tenant with excellent credit history and references. Small dog or cat allowed. No smoking in property. Tenant to maintain grounds, snow removal and mowing as needed.**

**Property Information**

Approx. Living Area: **2,443 Sq. Ft.**      Approx. Lot Size: **16,881 Sq. Ft.**      Parking Spaces: **6 Off-Street**  
Living Area Includes:      Heating: **Gas, Hot Water Baseboard**      Garage Spaces: **2 Attached, Garage Door Opener**  
Living Area Source: **Field Card**      Air Cond: **Yes**  
Living Area Disclosures: **Does not include finished room in basement.**  
Disclosures: **Lead paint risk assessment notes that a small area around some windows are affected.**

**Rental Information**

For Sale: **No**      First Mon Rent Req'd: **Yes**      Last Mon Rent Req'd: **Yes**  
Association: **No**      Security Deposit Req'd: **Yes/\$2,800**      Lease Terms:  
Date Available: **4/5/2019**      Rent Terms: **Lease**      Term of Rental (months): **12+**  
Date Avail. Note:      List Bkge. Fee Req. from Tenant: **No**      Insurance Req'd: **Yes**  
References Req'd: **Yes**      Smoking Allowed: **No**  
Pets Allowed: **Yes w/ Restrictions - Other (See Remarks)**

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Flooring - Hardwood, Open Floor Plan
Dining Room:	1		Open Floor Plan
Family Room:	1		Fireplace, Flooring - Wall to Wall Carpet
Kitchen:	1		Dining Area, Countertops - Stone/Granite/Solid, Cabinets - Upgraded, Remodeled, Stainless Steel Appliances
Master Bedroom:	2		Bathroom - Full, Closet, Flooring - Hardwood
Bedroom 2:	2		Closet, Flooring - Hardwood
Bedroom 3:	2		Closet, Flooring - Hardwood
Bedroom 4:	2		Closet, Flooring - Hardwood
Bath 1:	1		Bathroom - Half, Flooring - Stone/Ceramic Tile, Remodeled
Bath 2:	2		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 3:	2		Bathroom - Full, Flooring - Stone/Ceramic Tile, Remodeled
Laundry:	1		-
Sun Room:	1		Skylight, Flooring - Hardwood
Game Room:	B		Flooring - Vinyl
Foyer:	1		Flooring - Stone/Ceramic Tile

**Features**

Appliances: **Range, Dishwasher, Disposal, Refrigerator, Washer, Dryer**  
Area Amenities: **Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Golf Course, Medical Facility, Bike Path, Conservation Area, Highway Access, House of Worship, Public School, University**  
Association Pool: **No**  
Basement: **Yes Full, Partially Finished, Bulkhead**  
Beach - Miles to:  
Exterior Features: **Porch, Patio**  
Interior Bldg Feat: **Cable TV Available**  
Rent Fee Includes: **Water, Sewerage Disposal, Refuse Removal**  
Waterfront: **No**  
Water View: **No**

**Other Property Info**

Adult Community: **No**  
Lead Paint: **Yes**  
Disclosure Declaration: **Yes**  
Elevator: **No**  
Facing Direction: **Southwest**  
Furnished: **No**  
Laundry Features: **In Building**  
Pin #:  
UFFI: **No**  
Year Built: **1962** Source: **Public Record**  
Year Built Description: **Actual**  
Year Round: **Yes**

**Office/Agent Information**

RA 59

Listing Office: **William Raveis R.E. & Home Services**  (413) 565-2111

Listing Agent: **Roberta Orenstein**   (413) 575-0952

Team Member(s):

Sale Office: **Coldwell Banker Residential Brokerage - Longmeadow**  (413) 567-8931

Sale Agent: **Colleen Westberg**   (413) 531-6073

Listing Agreement Type: **Exclusive Right to Rent**

Entry Only: **No**

Showing: **Lock Box, Appointment Required**

Special Showing Instructions: **Text LA, 413-575-0952**

**Compensation**

Cooperating Compensation: **1/2 Mo.**

**Market Information**

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Listing Date: **4/2/2019**

Days on Market: Property has been on the market for a total of **5** day(s)

Expiration Date:

Original Price: **\$2,800**

Off Market Date: **4/7/2019**

Rental Date: **5/1/2019**

Sale Price: **\$2,800**

Listing Market Time: MLS# has been on for **5** day(s)

Office Market Time: Office has listed this property for **5** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:

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**MLS # 72494637 - Rented  
Rental - Single Family**

**59 Blueberry Hill Rd  
Longmeadow, MA 01106-1662  
Hampden County**  
Unit Level: **1**  
Grade School: **Blueberry Hill**  
Middle School: **Williams**  
High School: **LHS**  
Outdoor Space Available: **Yes - Private**  
Directions: **Off Bliss or Converse**

Rent: **\$3,300**  
Rented Price: **\$3,300**  
Total Rooms: **8**  
Bedrooms: **4**  
Bathrooms: **3f 1h**  
Master Bath: **Yes**  
Fireplaces: **2**

◀ 1 of 18 ▶

**Remarks**

Spacious sunny Colonial in great condition with wonderful open floor plan. Updated eat-in kitchen with loads of cabinet space, stainless steel appliances, granite counter tops, and center island. Kitchen opens to family room. Front to back living room with fireplace. Formal dining room. 1st floor laundry room. Four nice size bedrooms and 2 full baths on 2nd floor. Large Master Bedroom with gas fireplace and a wall of closets. Most rooms freshly painted. Recently refinished hardwood floors throughout. 2 nicely finished rooms in basement with 3/4 bath. Gas heat. Central air conditioning. 2 car attached garage. Gorgeous 1/2 acre yard with pond and tree house. Huge deck with hot tub. Excellent location close to the Longmeadow Shoppes and highly desirable schools- Blueberry Hill ES, Williams MS and LHS.

**Property Information**

Approx. Living Area: **2,516 Sq. Ft.**      Approx. Lot Size: **21,406 Sq. Ft.**      Parking Spaces: **4 Paved Driveway**  
Living Area Includes:      Heating: **Gas, Forced Air**      Garage Spaces: **2 Attached, Garage Door Opener**

Living Area Source: **Field Card**      Air Cond: **Yes**  
Living Area Disclosures: **Does not include finished rooms and 3/4 bath in finished basement.**  
Disclosures: **Tenant may use hot tub & tree house at their own risk & expense. Washer & dryer are current tenants & will be replaced for new tenants. Alarm wired but tenant must incur any activation/ monitoring expenses. Owners maintain pond & does seasonal yard cleanup. Tenant maintains lawn & does snow removal.**

**Rental Information**

For Sale: **No**      First Mon Rent Req'd: **Yes**      Last Mon Rent Req'd: **Yes**  
Association: **No**      Security Deposit Req'd: **Yes/\$3,300**      Lease Terms:  
Date Available: **8/1/2019**      Rent Terms: **Lease**      Term of Rental (months): **12**  
Date Avail.Note:      List Bkge. Fee Req. from Tenant: **No**      Insurance Req'd: **Yes**  
References Req'd: **Yes**      Smoking Allowed: **No**  
Pets Allowed: **Yes w/ Restrictions - Pets Negotiable**

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Fireplace, Flooring - Hardwood
Dining Room:	1		Flooring - Hardwood
Family Room:	1		Flooring - Hardwood
Kitchen:	1		Flooring - Hardwood, Dining Area, Countertops - Stone/Granite/Solid, Kitchen Island, Exterior Access, Recessed Lighting, Stainless Steel Appliances
Master Bedroom:	2		Bathroom - 3/4, Fireplace, Closet, Flooring - Hardwood
Bedroom 2:	2		Closet, Flooring - Hardwood
Bedroom 3:	2		Closet, Flooring - Hardwood
Bedroom 4:	2		Closet, Flooring - Hardwood
Bath 1:	1		Bathroom - Half, Flooring - Stone/Ceramic Tile
Bath 2:	2		Bathroom - Full, Bathroom - Tiled With Tub & Shower, Flooring - Stone/Ceramic Tile, Countertops - Stone/Granite/Solid
Bath 3:	2		Bathroom - 3/4, Bathroom - Tiled With Shower Stall, Flooring - Stone/Ceramic Tile, Countertops - Stone/Granite/Solid
Laundry:	1		Dryer Hookup - Electric, Washer Hookup
Play Room:	B		Flooring - Wall to Wall Carpet, Recessed Lighting, Walk-in Storage
Bonus Room:	B		Flooring - Wall to Wall Carpet
3/4 Bath:	B		Bathroom - With Shower Stall

**Features**

Appliances: **Range, Dishwasher, Disposal, Microwave, Refrigerator, Washer, Dryer**  
Area Amenities: **Public Transportation, Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Stables, Golf Course, Medical Facility, Bike Path, Conservation Area, Highway Access, House of Worship, Marina, Private School, Public School, University**  
Basement: **Yes Full, Finished, Bulkhead**  
Beach - Miles to:  
Exterior Features: **Deck, Hot Tub/Spa, Professional Landscaping, Fenced Yard**  
Interior Bldg Feat: **Security System, Elevator**  
Rent Fee Includes: **Water, Sewerage Disposal**  
Waterfront: **No**

**Other Property Info**

Lead Paint: **Unknown**  
Disclosure Declaration: **No**  
Elevator: **No**  
Facing Direction: **West**  
Furnished: **No**  
Laundry Features: **In Unit**  
Pin #: **M:0087 B:0099 L:0058**  
UFFI:  
Year Built: **1972**  
Source: **Public Record**

RA 61

Year Built Description:  
**Actual**  
 Year Round: **Yes**

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**Office/Agent Information**

Listing Office: **Coldwell Banker Residential Brokerage - Longmeadow** (413) 567-8931

Listing Agent: **Lisa Guardione** (413) 575-0563

Team Member(s):

Sale Office: **Coldwell Banker Residential Brokerage - Longmeadow** (413) 567-8931

Sale Agent: **Mark Kula** (413) 272-8802

Listing Agreement Type: **Exclusive Right to Rent**

Entry Only: **No**

Showing: **Call List Agent, Appointment Required**

Special Showing Instructions: **Text/call Lisa at 413-575-0563 or lguardione@gmail.com. Day before notice due to tenants.**

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**Compensation**

Cooperating Compensation: **1/2 month**

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**Market Information**

Listing Date: **5/6/2019**

Days on Market: Property has been on the market for a total of **10** day(s)

Expiration Date:

Original Price: **\$3,300**

Off Market Date: **5/16/2019**

Rental Date: **6/6/2019**

Sale Price: **\$3,300**

Listing Market Time: MLS# has been on for **10** day(s)

Office Market Time: Office has listed this property for **10** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:

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**THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS**

Hamden, ss:

Housing Court Department  
Western Division  
**No. 19-SP-190**

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**BANK OF NEW YORK MELLON,**

**Plaintiff,**

**v.**

**ALTON KING, JR.,**

**Defendant.**

---

**ORDER SETTING APPEAL BOND**

This matter came before the court on October , 2019 to establish an appeal bond and consider the defendant's request that the bond be waived due to his indigency. After hearing, at which the plaintiff appeared through counsel and the defendant Alton King appeared *pro se*, the following order shall enter:

1. In accordance with G.L. c.239, §5 and §6, the court must determine if the defendant is indigent and whether he has non-frivolous defenses or claims.

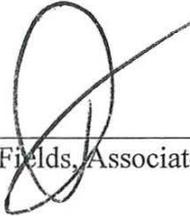
2. Given the submissions of the defendant including an affidavit of indigency, a supplement to said affidavit, and a Financial Statement, the court finds that the defendant is indigent in accordance with G. L. C.261, §27A-27G.

3. Additionally, the court finds that the defendant has non-frivolous defenses or counterclaims. More specifically, the defendant reasserted the claims he included in his Answer and though the court found against the defendant on Summary Judgment, it does not mean that it is without merit for purposes of this motion to waive the appeal bond.

**4. The monthly value of the premises; Use and Occupancy:** Based on the testimony of the plaintiff's witness, a real estate broker, and of the defendant himself, the court finds that the current value of the premises is \$4,000 per month. The court reaches this figure based on the testimony of the real estate broker establishing a monthly rental value with no major conditions of disrepair at \$5,000 based on his many years (near 9 years) experience as a licensed real estate broker with experience with both sales and rentals and his review and analysis of what he considered comparable rental properties in Longmeadow, Massachusetts. The highest rent of the three *comparables* about which the broker testified was \$3,300, but the subject premises is much larger and with significantly more amenities. That said, it appears that there exists conditions of disrepair including exposed wiring, lack of sufficient insulation, and water-stained ceilings. Accordingly, as noted above, the court finds that the appropriate use and occupancy for the subject premises in its current condition is \$4,000 per month.

**5. The bond:** In accordance with G.L. c.239, §5 and §6, the bond is waived other than monthly use and occupancy payments due by the last date of each month beginning November, 2019 in the amount of \$4,000 for each day that the defendant occupies the premises pending appeal. These monthly payments shall be deposited with the court's Clerks' Office and shall be in certified funds, with the first deposit due on or before November 30, 2019.

So entered this 31st day of October, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

WESTERN HOUSING COURT  
DOCKET NO: 19H79SP000190

Bank of New York Mellon f/k/a The Bank of New York,	)
As Trustee on Behalf of the Registered Holders of	)
Alternative Loan Trust 2006-J7, Mortgage Pass-Through	)
Certificates 2006-J7,	)
Plaintiff	)
v.	)
Alton King Jr.,	)
Defendant	)

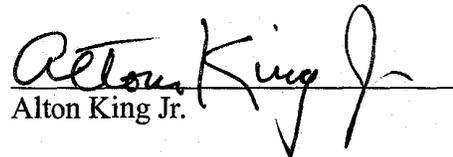
**DEFENDANT’S NOTICE OF APPEAL**

Pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, Defendant, Alton King Jr. (“Defendant”), hereby files and serves this Notice of Appeal. Defendant appeals from the Court’s October 31, 2019 Order related to the monthly Use and Occupancy imposed against the Defendant to perfect his appeal.

Additionally, pursuant to Rule 9 of the Massachusetts Rules of Appellate Procedure, Defendant hereby gives notice that he does not intend to order the transcript from the Bond Hearing. Please assemble the record file and serve this Notice of Appeal.

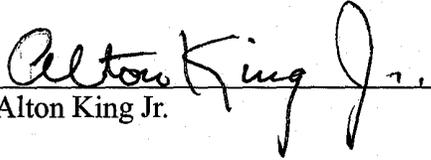
Dated: November 8, 2019

Defendant,

  
Alton King Jr.

**CERTIFICATE OF SERVICE**

I, Alton King Jr., hereby certify that this 8<sup>th</sup> day of November 2019, I served a true copy of the foregoing on Plaintiff's counsel of record via email:

  
Alton King Jr.

APPEALS COURT  
Single Justice  
Case Docket

BANK OF NEW YORK MELLON vs. ALTON KING, JR. & another  
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID  
2019-J-0560

CASE HEADER

<b>Case Status</b>	Disposed: Case Closed	<b>Status Date</b>	12/10/2019
<b>Nature</b>	Appeal Bond c 239, s 5	<b>Entry Date</b>	11/27/2019
<b>Pet Role Below</b>	Defendant	<b>Single Justice</b>	Sacks, J.
<b>Brief Status</b>		<b>Brief Due</b>	
<b>Case Type</b>	Civil	<b>Lower Ct Number</b>	
<b>Lower Court</b>	Housing Court, Western	<b>Lower Court Judge</b>	Robert G. Fields, J.

INVOLVED PARTY

**Bank of New York Mellon**  
Plaintiff/Respondent

**Alton King, Jr.**  
Defendant/Petitioner

**Terri A. Mayes-King**  
Defendant

ATTORNEY APPEARANCE

[Carl E. Fumarola, Esquire](#)

[Christine Kingston, Esquire](#)

[Lucas Boyd McArdle, Esquire](#)

[Ryan O'Hara, Esquire](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
11/27/2019	#1	Appeal entered pursuant to M.G.L.c. 239, § 5 with attachments.
11/27/2019	#2	Copy of Lower Court Docket Sheets, received from Housing Court, Western.
12/03/2019	#3	Notice of appearance filed for Alton King, Jr. by Attorney Lucas McArdle.
12/03/2019		Telephone notice to counsel for hearing before Sacks, J. on 12/9/19 at 2:00 P.M. in Courtroom 4.
12/04/2019	#4	Memorandum of law in support filed for Alton King, Jr. by Attorney Lucas McArdle.
12/05/2019	#5	Response to paper #1 filed for Bank of New York Mellon by Attorney Christine Kingston.

12/10/2019 #6

MEMORANDUM and ORDER: After judgment on the merits was entered against the defendant Alton King, Jr., in this post-foreclosure summary process action in the Housing Court, he filed a notice of appeal and a motion to waive the appeal bond. By order dated October 31, 2019, the Housing Court determined that the defendant was indigent and had non-frivolous defenses or counterclaims and thus waived the bond "other than monthly use and occupancy payments," in the amount of \$4,000 per month, to be paid into the court. The defendant filed a notice of appeal from that order, a hearing was scheduled, and in preparation for the hearing, both parties filed memoranda of law. The defendant argued that an order for such payments was impermissible under G.L. c. 239, §§ 5 and 6, or in the alternative that the amount ordered should be reduced. The plaintiff argued that the order was permissible and that no reduction of the amount is warranted. At the hearing on December 9, 2019, the parties acknowledged that this issue is a recurring one on which to date there is no published decision directly on point. In *Novastar Mortgage, Inc. vs. Saffran*, 83 Mass. App. Ct. 1119 (2013) (memorandum and order under Rule 1:28), a panel upheld an order for periodic payments in circumstances much like those here. In *Bank of New York Mellon vs. Dundon*, No. 2019-J-257 (July 17, 2019), a single justice of this court (Rubin, J.) reached the opposite conclusion in a memorandum and order on a motion for reconsideration or clarification. Since that time, other single justices of this court have followed the reasoning of Dundon. See, e.g., *Scaduto v. Malonson*, No. 2019-J-386 (Aug. 28, 2019) (Vuono, J.); *21st Mortgage Corp. v. Lapham*, No. 2019-J-394 (Aug. 28, 2019) (Vuono, J.); *Santander Bank, N.A. v. Adjarthey*, No. 2019-J-448 (Oct. 17, 2019) (Lemire, J.). I, similarly, find it appropriate to follow the reasoning of Dundon, and I therefore vacate so much of the Housing Court's October 31, 2019, order as required monthly use and occupancy payments. A copy of the single justice's order in Dundon is attached as an appendix to this decision.

In Dundon, Scaduto, and Lapham, the single justice's order has been appealed to a panel (Dundon having been docketed as 2019-P-1116, Scaduto as 2019-P-1382, and Lapham as 2019-P-1422). In both Dundon and Scaduto, however, the plaintiff-appellants' briefs assert threshold arguments that, if accepted, may result in the panel not reaching the question whether periodic payments may be ordered in circumstances like those present here.

At the hearing before me in this case, the parties agreed that an authoritative resolution of the question is desirable. Accordingly, pursuant to Appeals Court Rule 2:01 and Mass. R. Civ. P. 64(a), I hereby report the correctness of my decision to a panel of this court. Pursuant to Mass. R. App. P. 5, my report is the equivalent of a notice of appeal, and the plaintiff, Bank of New York Mellon, is the appellant. It would be desirable for the briefing in this appeal to be complete by February 1, 2020, to make it more likely that the appeal can be argued in the spring of 2020. To that end, the record in this appeal shall be assembled forthwith and the appeal docketed without payment of the usual fee, and the parties should not anticipate enlargements of time to file their briefs.

Once the defendant's appeal on the merits from the summary process judgment is docketed in this court, either party or the parties jointly may move to consolidate the appeals or to have them assigned to the same panel for hearing. However, because the appeals may proceed at different speeds and because each party is the appellant in one appeal and the appellee in another, I make no forecast regarding how any such motion will be resolved. Finally, as discussed at the hearing before me, I encourage the parties to consider what other persons, organizations, or other entities may have a sufficient interest in the question presented here to submit an amicus brief to the court once the case is docketed on the panel docket. (Sacks, J.). \*Notice/ Attest/Fields, J.

Footnote:

1.) Terri A. Mayes-King.

12/10/2019

Copy of paper #6 to counsel.

12/09/2019

Hearing held.

12/09/2019

Appearance of Attorney Lucas Boyd McArdle for Alton King, Jr..

12/09/2019

Appearance of Attorney Christine Kingston for Bank of New York Mellon.

12/10/2019 #7

Notice of Assembly of the Record to counsel.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

Essex, ss.

No. 2019-J-0560

**BANK OF NEW YORK MELLON**  
Plaintiff-Respondent

vs.

**ALTON KING, JR.**  
Defendant-Petitioner

Single Justice Review from Order of the Western Housing Court

**Petitioner's Motion and Memorandum in Support of Review of  
Housing Court Order for Use & Occupancy**

Counsel for Petitioner

Lucas B. McArdle  
BBO #694285  
McArdle Law & Associates, PLLC  
280 Merrimack Street, Suite 321  
Lawrence, MA 01843  
[Luke@mcardlelaw.com](mailto:Luke@mcardlelaw.com)  
Tel: 978-681-5150  
Fax: 978-681-5152

December 4, 2019

**ARGUMENT**

Now comes the Petitioner, Alton King, Jr. ("Petitioner" or "King") and respectfully moves that this Honorable Court review the October 31, 2019 Use & Occupancy Order from the Western Housing Court and further requests that this Court make a determination that the monthly use and occupancy payment either be waived entirely or set at an amount that provides King an actual opportunity to appeal the Housing Court Judgment that is in line with King's income and provides an indigent appellant such as King a fair opportunity to exercise his appellate rights.

In support of this motion, Petitioner says the following:

This case is before this Honorable Court following the Western Housing Court granting Bank of New York Mellon's ("Respondent" or "BNYM") motion for summary judgment, subsequently granting King a waiver of the bond after a finding that King was indigent and maintains a non-frivolous issue for appeal, but denying King's request for further waiver of use and occupancy - instead assessing an incredible \$4,000 monthly use and occupancy payment<sup>1</sup> to be made pending the appeal.

Petitioners direct this Court to the recent decision and order made within this context, also against BNYM and within

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<sup>1</sup> See Western Housing Court Order at Exhibit 1

this Court by Justice Rubin that required the lower court to waive continued monthly use and occupancy payments going forward and during the pendency of the appeal pursuant to *Bank of New York Mellon v. Deidre A. Dundon*, (2019-J-0257)<sup>2</sup>. Justice Rubin's interpretation of G.L. c 239 §§ 5 and 6 (See 7/17/2019 docket entry Order) is that use and occupancy is a condition of the bond and if the bond is waived, use and occupancy cannot be assessed - an interpretation that King asks this Court to adopt. This interpretation also falls in line with the intent of the indigency statute, which otherwise would be incredibly counterintuitive in determining that a party, who cannot afford the costs of an appeal and has a meritorious cause for appeal, cannot exercise that right due to a separate monthly obligation that is well beyond the means of the appealing party.

Lastly, the main issue that King is seeking appellate review on is not only non-frivolous, it is a claim that will very likely, if not undoubtedly, be decided in his favor - specifically related to the *Pinti* notice, a record document submitted with Plaintiff's Summary Judgment, Fumarola Exhibit J, which demonstrates Plaintiff's failure to strictly and/or substantially comply with Paragraph 22 of the King Mortgage, which causes the subject foreclosure and title derived therefrom

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<sup>2</sup> See *Bank of New York Mellon v. Deidre A. Dundon* at Exhibit 2

to be void - eliminating Plaintiff's standing, an issue that can also be raised for the first time on appeal. The *Pinti* notice, set forth at Plaintiff's Summary Judgment Exhibit J<sup>3</sup>, specifically states under Your Rights: "You have the right to reinstate after acceleration of your account and commencement of foreclosure proceedings." (emphasis added). This mirrors the invalidated notice pursuant to *Pinti* with incredible likeness as it clearly misrepresents the Defendant's rights in asserting King would have a chance to reinstate after initiation of foreclosure proceedings, proceedings that do not actually exist in a non-judicial foreclosure jurisdiction such as Massachusetts. A Massachusetts Housing Justice recently found that this exact notice from Select Portfolio Servicing with the exact language quoted above "did not comply, either strictly or substantially", pursuant to *Pinti*<sup>4</sup>. A *Pinti* issue such as this does not require King to demonstrate being prejudiced by the non-compliant notice - it requires strict compliance regardless of a whether a party can establish that the notice caused him/her to be prejudiced.

King has a winning appeal issue that was not properly argued to the lower court as King was not represented by legal counsel but is nevertheless part of the record and part of

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<sup>3</sup> See *Pinti* Notice at Exhibit 3

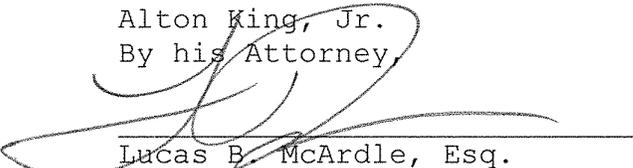
<sup>4</sup> See Order attached hereto as Exhibit 4

BNYM's required prima facie case, which is defective and results in BNYM's unlawful foreclosure and lack of standing to bring the subject summary process action. This fact makes the determination regarding the use and occupancy payments of utmost importance as this Court should recognize, as did the lower court, that King has an appellant argument that will likely reverse the Housing Court judgment in his favor and may lead to an opportunity for King to use his position to settle the case - and as an elderly man currently undergoing full cancer treatments, this may allow him an opportunity to obtain some assistance and relief in finding alternative suitable housing or otherwise assist him in pursuing meaningful settlement negotiations.

For the foregoing reasons, the Petitioner requests that this Honorable Court strike and waive the lower court's use and occupancy order and allow Petitioner the ability to exercise his appellate rights and advance his favorable position and claim with the Appeals Court.

Dated: December 4, 2019

Petitioner,  
Alton King, Jr.  
By his Attorney,

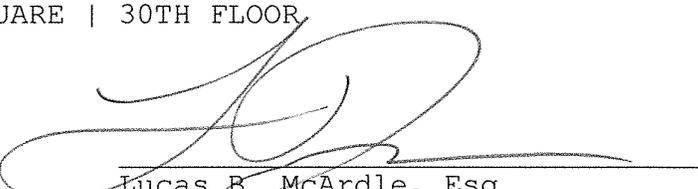


Lucas B. McArdle, Esq.  
BBO #: 694285  
McArdle Law & Associates, PLLC  
280 Merrimack Street, Suite 321  
Lawrence, MA 01843  
luke@mcardlelaw.com  
Tel: 978-681-5150  
Fax: 918-681-5152

**CERTIFICATE OF SERVICE**

I, Lucas B. McArdle, certify that a true copy of the Petitioner's foregoing Motion and Memorandum was served upon the Respondent's Attorney of record by First-Class Mail and email this 4<sup>th</sup> day of December 2019 to:

CARL E. FUMAROLA & CHRISTINE M. KINGSTON  
christine.kingston@nelsonmullins.com  
carl.fumarola@nelsonmullins.com  
Nelson Mullins Riley & Scarborough LLP  
ONE POST OFFICE SQUARE | 30TH FLOOR  
BOSTON, MA 02109



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luke@mcardlelaw.com  
Tel: 978-681-5150  
Fax: 918-681-5152

THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

Hamdpen, ss:

Housing Court Department  
Western Division  
No. 19-SP-190

\_\_\_\_\_  
BANK OF NEW YORK MELLON,

Plaintiff,

v.

ALTON KING, JR.,

Defendant.

ORDER SETTING APPEAL BOND



This matter came before the court on October , 2019 to establish an appeal bond and consider the defendant’s request that the bond be waived due to his indigency. After hearing, at which the plaintiff appeared through counsel and the defendant Alton King appeared *pro se*, the following order shall enter:

1. In accordance with G.L. c.239, §5 and §6, the court must determine if the defendant is indigent and whether he has non-frivolous defenses or claims.

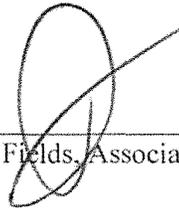
2. Given the submissions of the defendant including an affidavit of indigency, a supplement to said affidavit, and a Financial Statement, the court finds that the defendant is indigent in accordance with G. L. C.261, §27A-27G.

3. Additionally, the court finds that the defendant has non-frivolous defenses or counterclaims. More specifically, the defendant reasserted the claims he included in his Answer and though the court found against the defendant on Summary Judgment, it does not mean that it is without merit for purposes of this motion to waive the appeal bond.

4. **The monthly value of the premises; Use and Occupancy:** Based on the testimony of the plaintiff's witness, a real estate broker, and of the defendant himself, the court finds that the current value of the premises is \$4,000 per month. The court reaches this figure based on the testimony of the real estate broker establishing a monthly rental value with no major conditions of disrepair at \$5,000 based on his many years (near 9 years) experience as a licensed real estate broker with experience with both sales and rentals and his review and analysis of what he considered comparable rental properties in Longmeadow, Massachusetts. The highest rent of the three *comparables* about which the broker testified was \$3,300, but the subject premises is much larger and with significantly more amenities. That said, it appears that there exists conditions of disrepair including exposed wiring, lack of sufficient insulation, and water-stained ceilings. Accordingly, as noted above, the court finds that the appropriate use and occupancy for the subject premises in its current condition is \$4,000 per month.

5. **The bond:** In accordance with G.L. c.239, §5 and §6, the bond is waived other than monthly use and occupancy payments due by the last date of each month beginning November, 2019 in the amount of \$4,000 for each day that the defendant occupies the premises pending appeal. These monthly payments shall be deposited with the court's Clerks' Office and shall be in certified funds, with the first deposit due on or before November 30, 2019.

So entered this 31st day of October, 2019.

  
\_\_\_\_\_  
Robert Fields, Associate Justice

Supreme Judicial Court and Appeals Court of Massachusetts  
Public Case Information



Case Search
<ul style="list-style-type: none"> <li>Involved Party</li> <li>Docket Number</li> <li>Attorney Appearance</li> <li>Lower Court</li> <li>Lower Court Judge</li> </ul>
Court Calendars
<ul style="list-style-type: none"> <li>SJC Full Court</li> <li>SJC Single Justice</li> <li>AC Full Court</li> <li>AC Single Justice</li> </ul>
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**APPEALS COURT**  
**Single Justice**  
**Case Docket**

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**THE BANK OF NEW YORK MELLON vs. DEIDRE A. DUNDON**  
2019-J-0257

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CASE HEADER			
Case Status	Disposed: Case Closed	Status Date	07/17/2019
Nature	Appeal Bond c 239, s 5	Entry Date	06/04/2019
Pet Role Below	Defendant	Single Justice	PJR
Brief Status		Brief Due	
Case Type	Civil	Lower Ct Number	
Lower Court	Central Housing Court	Lower Ct Judge	Diana H. Horan, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
The Bank of New York Mellon Plaintiff/Respondent	<u>Kevin Polansky</u> , Esquire <u>Colin Barrett</u> , Esquire <u>Christine Kingston</u> , Esquire
Deidre A. Dundon Pro Se Defendant/Petitioner	



DOCKET ENTRIES		
Entry Date	Paper	Entry Text
06/04/2019	#1	Appeal entered pursuant to M.G.L.c. 239, § 5 with attachments.
06/06/2019	#2	Copy of Affidavit of indigency, received from Central Housing Court. (IMPOUNDED)
06/06/2019		ORDER: A memorandum in support of the appeal, if any, is due on or before June 12, 2019. An opposition, if any, is due on or before June 19, 2019. (Rubin, J.) *Notice/Attest/Horan, J
06/06/2019		Notice to counsel for hearing before Rubin, J. on Thursday 6/20/19 at 11:00am in Courtroom 4
06/12/2019	#3	Memorandum in support of waiver of appeal bond filed by Deidre A. Dundon.
06/12/2019	#4	Appendix filed by Deidre A. Dundon.
06/19/2019	#5	Response to paper #3, filed by The Bank of New York Mellon.
06/19/2019	#6	Appendix filed for The Bank of New York Mellon by Attorney Kevin Polansky.

DOCKET ENTRIES

06/19/2019 #7	Notice of appearance filed for The Bank of New York Mellon by Attorney Christine Kingston.
06/20/2019	Hearing held.
06/20/2019 #8	Appearance of Attorney Christine Kingston for The Bank of New York Mellon.
06/20/2019 #9	Appearance of Deidre A. Dundon
06/28/2019	<p>ORDER: The defendant seeks review of the order denying her motion to waive the appeal bond. It is timely because it was filed "within 6 days after receiving notice of the decision on the motion to waive the bond." G.L. c. 239, § 5(g). There is no dispute about defendant's indigency. The question is whether she has a non-frivolous defense. "[T]he determination that a defense is frivolous requires more than the judge's conclusion that the defense is not a winner and that the party claiming it is wrong as matter of law. Frivolousness imports futility - not a 'prayer of a chance.' Pires v. Commonwealth, 373 Mass. 829, 838 (1977)." Home Sav. Bank of Am. FSB v. Camillo, 45 Mass. App. Ct. 910, 911 (1998). One defense she raises is whether the Obsolete Mortgage Statute, G. L. c. 260, § 33, renders the mortgage unenforceable because the acceleration of the balance due under the note changed the maturity date of the mortgage. This is an open question in our appellate courts that has been litigated in some lower courts and in the federal district court. Although I express no view on its merits, it is not frivolous. This argument, however, was raised for the first time in the motion for reconsideration. The motion judge had discretion to consider it, but if he did not do so, it is waived. The defendant argues that the judge did consider it in the motion for reconsideration. The judge's order in that motion in its entirety reads: "Denied after hearing as no new evidence or matter that could not have been plead in a timely manner. Def arguments belong in an appeal of this court's judgment." The first sentence standing alone indicates that the motion was denied due to the timeliness of the arguments. But the order was denied after a hearing, and the judge wrote that the defendants' arguments should properly be raised on appeal, which might, the defendant argues, be viewed to mean implicitly that he was deciding them on their merits. This reading might be bolstered by the judge's statement in the order denying the motion seeking waiver of the bond that "The Defendant did not present arguments in defense at the time of the Summary Judgment hearing that resulted in judgment entering against her. She now both through a Motion to Reconsider and this Motion attempts to argue that there are genuine issues of material fact present such that Plaintiff was not entitled to judgment in its favor. Even ignoring the timing of such arguments, the defendant offers no admissible evidence to support her claims. Therefore, a Bond Order is warranted." Of course, no evidence aside from the mortgage itself is necessary to determine the legal claim concerning the Obsolete Mortgage statute. Again, the question is not whether the defendant has a winning</p>

DOCKET ENTRIES

	argument that the judge ruled on the merits. It is whether she has one worthy of presentation to an appellate court. That standard is met here. The May 23, 2019 order denying the motion to waive the bond is therefore vacated. (Rubin, J.). *Notice/Attest/Horan, J
07/01/2019 #10	Motion to reconsider filed for The Bank of New York Mellon by Attorney Christine Kingston.
07/11/2019 #11	Opposition to Plaintiff's Motion for Reconsideration filed by Deidre A. Dundon.
07/17/2019	ORDER: The plaintiff The Bank of New York Mellon moves for reconsideration and/or clarification of my June 28, 2019 order vacating a Housing Court order that required the defendant to pay an appeal bond of \$8,400 and monthly use and occupancy payments of \$1,050. The plaintiff's motion is granted to the extent it seeks clarification of my order. My order vacated the entire Housing Court order: The defendant is required to pay neither the appeal bond nor the periodic use and occupancy payments. To the extent the plaintiff's motion seeks reconsideration, it is denied. The plaintiff argues that, under G. L. c. 239, § 5 (e), even when the appeal bond is waived, the Housing Court is required to order the defendant to pay "monthly payments pending appeal." This misreads the statute. § 5 (e) states, "The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits." The statute does not require the payment of "monthly payments pending appeal," but only "rent which shall become due," and it forbids the court from ordering any other payments. Here, the parties have no tenancy relationship and the defendant does not owe rent. G. L. c. 239, § 5 (e) therefore forbade the Housing Court from ordering periodic payments pending appeal. This interpretation is bolstered by G. L. c. 239, § 6, which provides: "If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff." This, not § 5 (e), is the statute that sometimes requires the Housing Court to order periodic payments pending appeal in cases like this one, where the defendant is a foreclosed-on entity. But those payments are a "condition of the bond." Because there is no bond in this case, § 6 is inapplicable. To the extent the plaintiff's motion seeks clarification, it is granted as described above. In all other respects it is denied. So Ordered. (Rubin, J). *Notice/Attest/Horan, J
07/23/2019 #12	Notice of appeal filed for The Bank of New York Mellon by Attorney Christine Kingston.
07/24/2019	Copy of paper #12 to counsel.



- This is an important notice concerning your right to live in your home. Have it translated at once.
- Esta carta explica sus derechos legales para permanecer en su propiedad de vivienda. Por favor traduzca esta notificacion inmediatamente.
- Este é um aviso importante em relação ao seu direito de morar na sua residência. Por favor, tem traduzido imediatamente.
- C'est une notification importante concernant votre droit de vivre chez vous. Faites-la traduire immédiatement.
- 这是一则关于您居住权的重要通知, 请尽快安排翻译。

90-Day Right to Cure Your Mortgage Default

June 29, 2017

BY FIRST-CLASS MAIL AND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

TERRI A MAYES-KING
ALTON KING JR
49 MEMERY LANE
LONGMEADOW, MA 01106

RE: 49 MEMERY LANE, LONGMEADOW, MA 01106; loan [redacted] with Select Portfolio Servicing, Inc. (SPS), as servicer for The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 (c/o SPS, PO Box 65250 Salt Lake City, UT 84165-0250) (Mortgagee); Mortgage Loan Originator: ComUnity Lending, Incorporated, a California Corporation;

To TERRI A MAYES-KING, ALTON KING JR:

We are contacting you because you did not make your monthly loan payment(s) due on 10/01/2015, 11/01/2015, 12/01/2015, 01/01/2016, 02/01/2016, 03/01/2016, 04/01/2016, 05/01/2016, 06/01/2016, 07/01/2016, 08/01/2016, 09/01/2016, 10/01/2016, 11/01/2016, 12/01/2016, 01/01/2017, 02/01/2017, 03/01/2017, 04/01/2017, 05/01/2017, 06/01/2017 to SPS. You must pay the past due amount of \$165,432.07 on or before September 27, 2017, which is 90 days from the date of this notice. The past due amount on the date of this notice is specified below:

- \$4,618.77 Principal & Interest due on 10/01/2015; \$4,618.77 Principal & Interest due on 11/01/2015; \$4,618.77 Principal & Interest due on 12/01/2015; \$4,618.77 Principal & Interest due on 01/01/2016; \$4,618.77 Principal & Interest due on 02/01/2016; \$4,618.77 Principal & Interest due on 03/01/2016; \$4,618.77 Principal & Interest due on 04/01/2016; \$4,618.77 Principal & Interest due on 05/01/2016; \$4,618.77 Principal & Interest due on 06/01/2016; \$4,618.77 Principal & Interest due on 07/01/2016; \$4,618.77 Principal & Interest due on 08/01/2016; \$4,618.77 Principal & Interest due on 09/01/2016;
- \$4,618.77 Principal & Interest due on 10/01/2016; \$4,618.77 Principal & Interest due on 11/01/2016; \$4,618.77 Principal & Interest due on 12/01/2016; \$4,618.77 Principal & Interest due on 01/01/2017; \$4,618.77 Principal & Interest due on 02/01/2017; \$4,618.77 Principal & Interest due on 03/01/2017; \$4,618.77 Principal & Interest due on 04/01/2017; \$4,618.77 Principal & Interest due on 05/01/2017; \$4,618.77 Principal & Interest due on 06/01/2017
- \$70,837.90 Outstanding Escrow Balance;



If you pay the past due amount, and any additional monthly payments, late charges or fees that may become due between the date of this notice and the date when you make your payment, your account will be considered up-to-date and you can continue to make your regular monthly payments.

Make your payment directly to:

Select Portfolio Servicing, Inc.  
Attn: Cashiering Department  
PO Box 65450 Salt Lake City, UT 84165-0450

Please consider the following:

- You should contact the Homeownership Preservation Foundation (888-995-HOPE) to speak with counselors who can provide assistance and may be able to help you work with your lender to avoid foreclosure.
- If you are a MassHousing borrower, you may also contact MassHousing (888-843-6423) to determine if you are eligible for additional assistance. There may be other homeownership assistance available through your lender or servicer;
- You may also contact the Division of Banks (617-956-1500) or visit [www.mass.gov/foreclosures](http://www.mass.gov/foreclosures) to find a foreclosure prevention program near you;
- After September 27, 2017, you can still avoid foreclosure by paying the total past due amount before a foreclosure sale takes place. Depending on the terms of the loan, there may also be other ways to avoid foreclosure, such as selling your property, refinancing your loan, or voluntarily transferring ownership of the property to The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7.

**If you do not pay the total past due amount of \$165,432.07 and any additional payments that may become due by September 27, 2017, you may be evicted from your home after a foreclosure sale. If The Bank of New York Mellon, f/k/a, the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 forecloses on this property, it means the mortgagee or a new buyer will take over the ownership of your home.**

If you have questions, or disagree with the calculation of your past due balance, please contact SPS at 800-635-9698 or PO Box 65277 Salt Lake City, UT 84165-0277.

Sincerely,

Lindsey Clissold  
Vice President, Quality Control Department  
Select Portfolio Servicing, Inc.

Enclosed with this notice, there may be additional important disclosures related to applicable laws and requirements that you should carefully review.



June 29, 2017

TERRI A MAYES-KING  
ALTON KING JR  
49 MEMERY LANE  
LONGMEADOW, MA 01106

Re: Account Number: [REDACTED]  
Property Address: 49 MEMERY LANE  
LONGMEADOW, MA 01106

Dear Customer(s):

This letter provides additional information about your mortgage loan default and is intended to complement the enclosed "90 Day Right to Cure Your Mortgage Default" (the "90 Day Notice"). In the event of any conflict between the terms of this letter and those contained in the 90 Day Notice, the terms of the 90 Day Notice will control.

As noted in the 90 Day Notice, the mortgage on your property is in default as a result of your failure to make payments as required by the Note and Deed of Trust or Mortgage (Security Instrument). Select Portfolio Servicing, Inc. (SPS) services your mortgage loan and has been instructed on behalf of the holder of the promissory note to pursue remedies under the Security Instrument unless you take action to cure the default as detailed in the 90 Day Notice.

**Possible Consequences of Default**

If we do not receive the past due amount by the date listed in the 90 Day Notice, or some loss mitigation alternative to foreclosure has not started, SPS may initiate foreclosure and require immediate payment in full of the entire outstanding unpaid amount on the account. In other words, failure to cure the default on or before September 27, 2017 may result in acceleration of sums secured by the Security Instrument and sale of the Property. If that happens, you may lose your home. A foreclosure will result in the involuntary loss of the property via sale to the lender, or another person may acquire the property by means of foreclosure and sale, and you may be evicted. Once foreclosure is initiated, additional amounts for legal fees and costs may be incurred. These sums can be significant. They may be added to amounts secured by the Security Instrument, and they may be required to be paid, to the extent permitted by law, if you wish to reinstate or satisfy the loan after foreclosure is initiated.

**Payment Options**

Please provide payments to the following address:

Sent via US Mail to:  
Select Portfolio Servicing, Inc.  
PO Box 65450 Salt Lake City, UT 84165-0450

Sent via overnight courier to:  
Select Portfolio Servicing, Inc.  
Attn: Remittance Processing  
3217 S. Decker Lake Dr Salt Lake City, UT 84119

Payments may be submitted in the following forms:

- (a) Personal check
- (b) Money order
- (c) Bank wire (electronic funds transfer). Please contact SPS for the information necessary to complete a bank wire.



- (d) Certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency.
- (e) Western Union Quick Collect. Reference the loan number above and deliver to Code City: Oswald, Code State: UT.

In some circumstances, you may be able to submit a payment through EZ Pay by calling 800-258-8602 or visiting our website at [www.spservicing.com](http://www.spservicing.com). Please remember that EZ Pay payments clear quickly, and you must have the funds in your checking account on the day you ask us to process a payment. We will obtain your consent prior to initiating payment and will advise you of any fee for this service, which may be up to \$15.00.

SPS requires that you pay reinstatement amounts in certified funds. Certified funds include a bank wire, cashier's bank check, attorney trust account check, title or escrow company check, or Western Union Quick Collect. Please contact SPS at 800-635-9698 for instructions on submitting these funds.

**You Have Options to Avoid Foreclosure!**

SPS is committed to home retention and offers many customer assistance programs designed to help customers avoid foreclosure. These programs are offered at no cost to our customers and are designed to help preserve home ownership or prevent foreclosure through structured repayment plans, special payment arrangements, modifications, short settlements, and deed-in-lieu options, if you are eligible.

If you would like to learn more about these programs, you should immediately contact an SPS representative at our toll-free number, 800-635-9698, or visit our website at [www.spservicing.com](http://www.spservicing.com). Our representatives are available by phone Monday through Thursday between the hours of 8 a.m. and 11 p.m., Friday from 8 a.m. to 9 p.m., and Saturday from 8 a.m. to 2 p.m., Eastern Time.

If you have any questions, your assigned Relationship Manager, Cory Bartley, can be reached toll free at 800-635-9698 Ext. 37573 or by email at [Relationship.Manager@SPServicing.com](mailto:Relationship.Manager@SPServicing.com).

**If we can reach an agreement to resolve your default, we will not proceed with and/or commence foreclosure, as long as you comply with the agreement and make required payments.**

**Servicemembers Civil Relief Act (SCRA)**

SPS is committed to home ownership assistance for active servicemembers and veterans of the United States military. You may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.) regarding your interest rate and the risk of foreclosure if you are a servicemember or a dependent of a servicemember. Counseling for covered servicemembers is available at agencies such as Military OneSource (800-342-9647 or [www.militaryonesource.mil](http://www.militaryonesource.mil)) and Armed Forces Legal Assistance (<http://legalassistance.law.af.mil>). Note: your state may have more expansive eligibility criteria than below. Please contact us as soon as possible if you have any questions or believe you may be eligible.

Eligible service may include, but is not limited to:

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force Marine Corps and Coast Guard), or
- Reserve and National Guard personnel who have been activated and are on Federal active duty, or
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds, or
- Active service members of the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, or
- Certain United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action.

Please send written notice of military service as soon as possible to:

Select Portfolio Servicing, Inc.  
PO Box 65250 Salt Lake City, UT 84165-0250

If you have questions regarding eligibility and application requirements, please call us at 800-258-8602.

**Your Rights**

If you wish to dispute your delinquency or the correctness of the past due amount listed in the 90 Day Notice, you may do so by providing a written dispute to SPS at the following address:

Select Portfolio Servicing, Inc.  
PO Box 65277 Salt Lake City, UT 84165-0277

You may call SPS at our toll free number 800-258-8602 to discuss your dispute. However, to protect your rights under federal law, you will need to provide written notice to SPS if you believe that your dispute is unresolved.

You have the right to reinstate after acceleration of your loan and commencement of foreclosure proceedings. If you reinstate, the Security Instrument shall remain fully effective as if no acceleration had occurred.

You have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale.

A review of the HUD-1 specifies that ComUnity Lending, Incorporated, a California Corporation was listed as your mortgage broker/originator for this mortgage. We are supplying this information as required by the Commonwealth of Massachusetts.



**Counseling**

HUD approved home ownership counseling may be available to you. You should call (800) 569-4287 or TDD (800) 877-8339, or go to HUD's website at [www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm](http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm) to find the HUD-approved housing counseling agency nearest you. You may be eligible for assistance from the Homeownership Preservation Foundation, which may be reached at the Homeowner's HOPE™ Hotline at 888-995-HOPE™ (888-995-4673) or at their website, [www.995hope.org](http://www.995hope.org), or you may seek help from another non-profit foreclosure avoidance agency.

Financial assistance may be available to you from programs operated by the State or Federal Government. Below is a list of Government agencies that you may wish to contact or ascertain whether you qualify for assistance.

**Massachusetts Division of Banks** (617) 956-1500  
**Massachusetts Housing Finance Agency** (617) 854-1000, (413) 733-0999 or (800) 439-2370  
[www.masshousing.com](http://www.masshousing.com)

**HUD Approved Housing Counseling** (800) 569-4287  
<https://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

**Veterans Administration** (800) 827-1000  
**HOPE Hotline** (888) 995-HOPE (4673)

You have options to avoid foreclosure. THE TIME TO ACT IS NOW. Please call us at 800-635-9698.

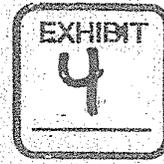
Sincerely,

Select Portfolio Servicing, Inc.

**Esta carta contiene información importante concerniente a sus derechos. Por favor, traduzca esta carta. Nuestros representantes bilingües están a su disposición para contestar cualquier pregunta. Llámenos al número 800-831-0118 y seleccione/marque la opción 2.**

**This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.**

COMMONWEALTH OF MASSACHUSETT  
NORTHEAST HOUSING COURT



U.S. BANK

Plaintiff

- v. -

No. 18-SP-1260

CONSTANTINE TASLIS

Defendant

ORDER

Upon the authority and reasoning of Pinti (2015), I hold that inclusion of the phrase "after acceleration of your account and commencement of foreclosure proceedings" (where "commencement of foreclosure proceedings" was not intended and did not in fact occur) in the "150 Day Right to Cure Your Mortgage Default" pre-foreclosure notice by SPS Select Portfolio Servicing Inc., dated January 8, 2016, upon which the plaintiff relies, did not comply, either strictly or substantially, with the requirements of Paragraph 22 of the underlying Mortgage, such that the plaintiff cannot prevail in its summary process action for possession of the subject residential premises.

I do not reach the Thompson (2019) and other arguments raised by the parties in their cross-motions for summary judgment.

Enter judgment dismissing the complaint.

A handwritten signature in cursive script, appearing to read "David D. Kerman".

David D. Kerman  
Associate Justice

July 22, 2019

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

APPEALS COURT NO. 2019-J-0560  
WESTERN HOUSING COURT  
DOCKET NO. 19H79SP000190

_____	)
BANK OF NEW YORK MELLON,	)
	)
Plaintiff/Respondent	)
	)
v.	)
	)
ALTON KING, JR.,	)
	)
Defendant/Petitioner	)
	)
-and-	)
	)
TERRI A. MAYES-KING,	)
	)
Defendant.	)
_____	)

**THE BANK OF NEW YORK MELLON'S MEMORANDUM IN OPPOSITION TO  
PETITIONER'S REQUEST FOR REVIEW OF APPEAL BOND ORDER**

Plaintiff/Respondent The Bank of New York Mellon f/k/a The Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 ("Plaintiff") respectfully submits, pursuant to G.L. c. 239, § 5(g), its Memorandum in Opposition to Defendant/Respondent Alton King Jr.'s ("King") request for review of the Appeal Bond Order of the Western Housing Court dated October 31, 2019.

King's argument that he should be required to pay nothing to pursue his appeal is contrary to the plain terms of the appeal

bond statutes, case law of this Court, and basic principles of due process and fundamental fairness. King's alternative argument that he should be required to pay only what he can afford is also contrary to the statutes, case law, and due process, and is also unsupported by details of what exactly he can and should pay—not to mention waived for his failure to advance the argument below. Plaintiff requests that the Housing Court's Appeal Bond Order be affirmed.

#### **RELEVANT PROCEDURAL HISTORY**

This is a post-foreclosure eviction case. On July 5, 2019, the Housing Court (Fields, J.) granted Plaintiff's motion for summary judgment on its claim for possession of the subject property (49 Memery Lane, Longmeadow, Massachusetts ("Property")). See July 5, 2019 Order. The Housing Court noted that King had filed no written opposition to the motion. See *id.* Judgment entered on even date. See Judgment.

King thereafter appealed and moved to waive the appeal bond. See July 31, 2019 Notice of Appeal and Motion to Waive Bond. Plaintiff, in turn, filed an Opposition and Motion to Set the Bond. See August 12, 2019 Motion to Set Bond. Plaintiff later supported its Motion with the affidavit of its broker, James Coombs. See Exhibit 1 - *Affidavit of James Coombs*. Mr. Coombs, a licensed real estate broker in Massachusetts, attested that he had recently inspected both the interior and exterior of the Property, and his

opinion was that the Property's monthly fair rental value was \$5,000. *See id.*

After a hearing on the bond motions, at which both Mr. Coombs and King testified, the Housing Court issued an Order Setting Appeal Bond ("Bond Order") on October 31, 2019. *See* Oct. 31, 2019 Bond Order. The Housing Court determined that King was indigent and had non-frivolous defenses to pursue on appeal, and therefore waived the retrospective bond requirement pursuant to G.L. c. 239, § 5(e). *See id.*<sup>1</sup> Also pursuant to that statute, the Housing Court ordered King to prospectively pay \$4,000 per month beginning on November 30, 2019. *See id.* The Housing Court credited Mr. Coomb's testimony but determined that the Property was worth \$4,000, rather than \$5,000, per month due to some non-major conditions of disrepair. *See id.*<sup>2</sup> In requiring King to pay \$4,000 per month, the Housing Court implicitly rejected King's argument that he cannot be required to pay any bond in a post-foreclosure eviction case where the retrospective bond has been waived for indigency.

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<sup>1</sup> Plaintiff disagrees that King has non-frivolous defenses on appeal, as he did not file any opposition to its motion for summary judgment, but Plaintiff has not appealed that ruling and seeks to uphold the \$4,000 per month requirement.

<sup>2</sup> Although King has contended that there is a structural danger in an area of the Property housing a basketball court, Plaintiff's engineer has inspected that area and concluded that no structural danger exists. *See* Exhibit 2 - *Report of Plaintiff's Engineer.*

## ARGUMENT & AUTHORITIES

King raises two arguments in his memorandum of law in support of his request for review. See Paper No. 4. First, King argues that he cannot be required to pay any bond or monthly payments where his bond has been waived, relying on a recent Single Justice decision that is pending a full panel appeal in this Court. Alternatively, King argues that he should only be required to pay monthly payments in an unspecified amount he can afford. Both arguments are contrary to the plain terms of the statutes, case law, and due process. Plaintiff addresses each in turn.

A. Where Bond Has Been Waived Pursuant to G.L. c. 239, § 5(e), the Defendant is Required by Statute to Pay Monthly Payments to Plaintiff.

There are two relevant appeal bond statutes. First, G.L. c. 239, § 6 applies to post-foreclosure eviction cases and provides in relevant part that the appeal bond should be set at "all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff." G.L. c. 239, § 6. Importantly, Section 6 does not include any provision allowing a court to waive the appeal bond in a post-foreclosure eviction case.

Conversely, the more general appeal bond statute, G.L. c. 239, § 5, does include a waiver provision. That provision states that "[t]he court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver

has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261." G.L. c. 239, § 5(e). Critically, the waiver provision includes an important limitation. The very next sentence of the statute following the waiver provision states:

**The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver.**

*Id.* (emphasis added). Thus, *if* the retrospective appeal bond has been waived, the court *must require* the defendant to pay "in installments ... all or any portion of any rent which shall become due after the date of the waiver." *Id.*

As noted, Section 6—which specifically applies to post-foreclosure eviction cases—does not include a waiver provision. There is no published appellate case holding that the waiver provision of Section 5 applies in a post-foreclosure case. However, the Appeals Court has suggested that Section 5 applies even in a post-foreclosure case. *See Home Sav. Bank of Am., FSB v. Camillo*, 45 Mass. App. Ct. 910, 911 (1998) (noting that Section 6 "does not cause the procedures of § 5 to be inapplicable in [post-foreclosure] cases"). Moreover, it is Plaintiff's experience that trial courts have applied Section 5's waiver provision in post-foreclosure cases where the required factors (indigency and non-frivolous defenses) are met.

Importantly, if Section 5(e)'s waiver provision is to apply in a post-foreclosure case, then the limitation thereon (the requirement to pay monthly installments) must also apply. There is no other way to read Section 5(e), which plainly states that, where bond has been waived, the court *shall require* monthly installments of rent to be paid. King argues that, in a post-foreclosure case where bond has been waived, he cannot be required to pay monthly installments of rent. In doing so, King relies exclusively on a decision of a Single Justice of this Court in *The Bank of New York Mellon v. Dundon*, 2019-J-0257, Orders dated June 28, 2019 and July 17, 2019 ("Dundon Decision"), and asks the Single Justice in this case to adopt the Single Justice's decision in that case. That decision should not be adopted.

In the first instance, the Dundon Decision is subject to a pending, panel appeal in this Court. See *Bank of New York Mellon v. Dundon*, Appeal No. 2019-P-1116. Plaintiff notes that similar issues are pending in other panel appeals in this Court. See *Jason Scaduto v. Linda Malonson*, Appeal No. 2019-P-1382;<sup>3</sup> see also *Federal National Mortgage Association v. Anthony Michael Branch*, Appeal No. 2019-P-0004. Plaintiff also notes that other Single Justices have come to contrary conclusions than the Dundon

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<sup>3</sup> The plaintiff/appellant in *Scaduto* has also filed a pending application for direct appellate review in the Supreme Judicial Court. See *Jason Scaduto v. Linda Malonson*, Appeal No. DAR-27112.

Decision. See, e.g., *Federal National Mortgage Ass'n v. Anthony Michael Branch*, 2019-P-0004, Jan. 29, 2019 Order (waiving bond in post-foreclosure case but requiring monthly payments pending appeal).

Where there is no published appellate case supporting King's position (and in fact the only panel case is directly contrary to his position, see *infra*), King's argument must be rejected. Insofar as the Appeals Court or the Supreme Judicial Court would be inclined to break new appellate ground and hold that Section 5(e)'s monthly payment requirement does not apply in a post-foreclosure case, such new ground should be broken in a panel appeal in a published decision with the benefit of full briefing and oral argument.

In any event, Plaintiff also submits that the Dundon Decision on which King relies is incorrect. The Single Justice who issued the Dundon Decision focused on the use of the phrase "rent which shall become due" in Section 5(e), concluding that there is no "rent" due to a bank that is evicting the former owner after foreclosure. See July 17, 2019 Dundon Decision ("Here, the parties have no tenancy relationship and the defendant does not owe rent."). Contrary to the Single Justice's conclusion, "rent" does not require the existence of a valid lease by and between a landlord and bona fide tenant. To reject this erroneous interpretation, one need not look any further than the very statute

that governs post-foreclosure appeal bonds. That statute provides that, in such cases, the bond shall be in the amount of "all costs and of a reasonable amount as rent of the land" from the date of foreclosure until possession is obtained. See G.L. c. 239, § 6 ("If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff.").

Thus, a narrow interpretation of "rent" under Section 5(e) to require a bona fide landlord-tenant relationship is plainly inconsistent with the Legislature's use of "rent" in Section 6, where there necessarily is no lease or bona fide landlord-tenant relationship. It is well-settled that this Court's duty in interpreting a statute is to effectuate the intent of the Legislature, and that overly literal readings that would yield illogical or absurd results are to be avoided. See, e.g., *Sheehan v. Weaver*, 467 Mass. 734, 737 (2014) ("Our primary duty in interpreting a statute is to effectuate the intent of the Legislature in enacting it." (quotation and citation omitted)); *Commonwealth v. Peterson*, 476 Mass. 163, 167 (2017) ("We do not adhere blindly to a literal reading of a statute if doing so would yield an absurd or illogical result" (quotation marks and citation

omitted)); *Attorney Gen. v. School Comm. of Essex*, 387 Mass. 326, 336 (1982).

Thus, to the extent the Single Justice in the Dundon Decision believed that the term "rent" in its common usage or otherwise implied and required the existence of a lease and tenancy relationship, such belief should have been overridden by the Legislature's usage of "rent" even in the non-tenancy context. See *Commonwealth v. Raposo*, 453 Mass. 739, 745 (2009) ("A statute's terms must be read harmoniously to effectuate the intent of the Legislature, and in seeking to do so, we look first and foremost to the language of the statute as a whole." (internal citations and quotation marks omitted)).

This conclusion is buttressed by other statutes that relate to post-foreclosure cases. For example, Massachusetts General Laws Chapter 186, § 3 provides that tenants at sufferance "in possession of land or tenements shall be liable to pay rent therefor for such time as they may occupy or detain the same." G.L. c. 186, § 3 (emphasis added). Former owners holding over after a foreclosure, such as King here, are tenants at sufferance to whom this statute applies. See, e.g., *Federal Nat'l Mortgage Ass'n v. Gordon*, 91 Mass. App. Ct. 527, 535 n.15 (Mass. App. Ct. 2017) (following a foreclosure, mortgagor's "ownership interest in the property was terminated and she became a tenant at sufferance, with no legal interest in the property"); *Deutsche Bank Nat'l Trust*

*Co. v. Gabriel*, 81 Mass. App. Ct. 564, 571-72 (Mass. App. Ct. 2012) (same).

As such, in at least two contexts, G.L. c. 239, § 6 and G.L. c. 186, § 3, the Legislature has used the term "rent" to describe the type of payments or damages that are owing in the post-foreclosure context from the holdover former owners to the post-foreclosure owner. The Legislature has never restricted "rent" in this context to landlord-tenant relationships.

But even if the Single Justice determines in this case that the term "rent" as used in Section 5(e) cannot apply to post-foreclosure cases, then the Single Justice must also determine that no portion of Section 5(e) applies in such cases, as both the bond waiver and the periodic payment portions of that section are to be read together. See *Flemings v. Contributory Retirement Appeal Board*, 431 Mass. 374, 375 (2000) ("If a sensible construction is available, we shall not construe a statute to make a nullity of pertinent provisions or to produce absurd results.").

Under Section 5(e), if the appeal bond is waived, then the court must require the payment of all or any portion of any rent which shall become due. The two sentences must necessarily be read together and are naturally inseparable. To allow the application of one sentence, while simultaneously disregarding the application of the next sentence, would produce an absurd result.

Indeed, in the only Massachusetts appellate case in which a panel has addressed this very issue, a panel of the Appeals Court held that all portions of Section 5(e) are applicable in a post-foreclosure case:

We are not persuaded that the order instituting periodic payments during the pendency of the appeal was improper. See G.L. c. 239, §§ 5(e) & 6; *Home Sav. Bank of Am., FSB v. Camillo*, 45 Mass.App.Ct. 910, 911 (1998). ...

**If, as Saffran argues, Novastar was limited to the remedies under § 6 (insofar as it governs summary process actions arising after a foreclosure), as a matter of fairness, he also would have been limited (and thus required to post an appeal bond). Only by resort to § 5(e) was Saffran relieved of that statutory requirement. Having had the benefit of the § 5(e) procedure, Saffran cannot argue that the burdensome portion of that provision (requiring installment payments for use and occupancy after the date of bond waiver, pending appeal) was inapplicable.**

See *Novastar Mortgage, Inc. v. Saffran*, 2013 WL 1131271, at \*1 (Mass. App. Ct. March 20, 2013) (unpublished).

This makes abundant sense. There is no waiver provision under Section 6. Thus, a defendant in a post-foreclosure case must resort to Section 5(e) to the extent they seek a waiver of their bond on appeal because of their indigency. Having invoked Section 5(e)'s bond waiver provision, and the attendant benefits that this provision brings, the defendant "cannot argue that the burdensome portion of [the statute] [requiring installment payments for use and occupancy after the date of bond waiver, pending appeal] [is] inapplicable." *Id.* A contrary reading of the statute that allows

a defendant in a post-foreclosure case to cherry-pick the application of one sentence of the statute while avoiding application of the next sentence of the statute would produce an absurd result. See *Flemings*, 431 Mass. at 375.

This is especially true when considering why the Legislature amended G.L. c. 239, § 5(e) to require periodic payments pending appeal where bond has been waived. As the Appeals Court observed, the Legislature amended the statute in 1969 to "permit the waiver of the bond requirements" for indigent defendants. See *Kargman v. Dustin*, 5 Mass. App. Ct. 101, 109-110 (Mass. App. Ct. 1977). A mere two years later, "the Legislature added the present ... sentence to s[.] 5 which permits a judge[] who has waived security, to require a tenant to pay 'all or any portion of any rent which shall become due' ... as a condition of remaining in possession of the premises pending appeal." *Id.* at 110. "That addition would indicate that the Legislature, after providing for the waiver of bond in hardship cases, **decided to redress an imbalance** in summary process appeals to permit a judge, in the exercise of his sound discretion, to order payment of an appropriate portion of the rent as security." *Id.* (emphasis added).

In other words, the two clauses of Section 5(e), one permitting a waiver of bond for an indigent defendant and one requiring periodic payments where bond has been waived, are inexorably tied, purposely so, by the Legislature. As the

Legislature intended, *if* bond is waived, *then* periodic payments are required.

In addition to all of the foregoing, King's position that he should not be required to pay *anything* to pursue his appeal must also be rejected on due process and basic fairness grounds. It is fundamentally contrary to Massachusetts law that King would be allowed to occupy a property that he does not own or lease without paying *anything* (not the fair rental value; not the taxes and carrying costs; not the mortgage payments), while Plaintiff is required to pay the carrying costs for the Property, is denied rental income, and bears all of the burdens of ownership while not enjoying any of the benefits thereof, all while paying fees and costs to defend its title on appeal. This is fundamentally contrary to basic tenets of Massachusetts law and to due process. *See Davis v. Comerford*, 483 Mass. 164, 169-70 (2019) ("The payment for use and occupancy imposed by this statute was intended to prevent any tenant from occupying premises without making compensation to his landlord" (*citing* G.L. c. 186, § 3) (quotation marks omitted)). "The tenant [at sufferance] owes ... the fair rental value of the premises." *Id.* (quotation marks and citation omitted)).

This is such an important tenet of the law that it potentially implicates the due process rights of the owner or landlord of the property. *Id.* at 170 n.14 ("Indeed, the United States Supreme Court has suggested that due process issues might arise if a

'tenant remained in possession without paying rent.'" (quoting *Lindsey v. Normet*, 405 U.S. 56, 67 n.13, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972)). See also *Lindsey v. Normet*, 405 U.S. 56, 67 n.13 (1972) ("At oral argument, appellants conceded that if a tenant remained in possession without paying rent, a landlord might be deprived of property without due process of law"); *Mahdi v. Poretsky Management, Inc.*, 433 A.2d 1085, 1089 (D.D.C. 1981) (depriving landlord of right to income while tenant challenges eviction "might well constitute the kind of [constitutionally forbidden] confiscation against which the Court warned in *Lindsey*").<sup>4</sup>

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<sup>4</sup> Conversely, an order requiring King to pay \$4,000 per month pending his appeal does not implicate his constitutional due process rights whatsoever. A reasonable bond amount or periodic payments do not threaten a defendant's constitutional rights. See *Kargman*, 5 Mass. App. Ct. at 112 ("With respect to due process, the Supreme Court has held that a requirement that a tenant pay rent pending judicial determination of an eviction case is not unconstitutional."). In fact, in contrast to the jury trial right potentially implicated in *Kargman*, King has no constitutional right to a civil appeal in an eviction case. See, e.g., *Dickerson v. Attorney Gen.*, 396 Mass. 740, 743 n.3 (1986). Nor does King have any constitutional right to continue to occupy the Property after foreclosure. See *Lindsey*, 405 U.S. at 74 ("We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality, or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.").

As the Appeals Court has previously recognized, allowing someone to occupy the property of another without paying anything to do so is to "accord [them] squatters' rights pending the resolution of their appeals." *Kargman*, 5 Mass. App. Ct. at 110. This is not what the Legislature intended by and through G.L. c. 239, §§ 5 and 6 and it not in harmony with the fundamental rules and tenets underlying Massachusetts law.

A person occupying the property of another illegally must pay something to do so. In the post-foreclosure eviction context, that amount is the fair rental value of the property. See *Comerford*, 2019 WL 4409434, at \*4 (tenant at sufferance owes "fair rental value of the premises," i.e. the amount that use and occupancy is reasonably worth) (discussing pre-judgment use and occupancy payments).

In light of the foregoing, Plaintiff requests that the Single Justice affirm the Housing Court's Order requiring King to pay \$4,000 per month to pursue his appeal.

B. The Monthly Amount Should Not Be Reduced.

In the alternative, King argues that the \$4,000 should be reduced on grounds of unaffordability. The Single Justice should reject this argument outright on the basis that King has failed to offer any suggestion of what an appropriate monthly amount would be in lieu of the Housing Court's finding of \$4,000. Nor does King even attempt to address factors that might be relevant to

this determination, such as the amount of taxes and carrying costs that Plaintiff pays, the last mortgage payment on the Property, etc.

Plaintiff also notes that King did not advance this argument in his briefing below; as such, it is waived. See July 31, 2019 Motion to Waive Bond. See also *Carey v. New England Organ Bank*, 446 Mass. 270, 285 (2006) (“[A]n issue not raised or argued below may not be argued for the first time on appeal.” (quotation and citation omitted)).

In any event, King’s position is also legally untenable. Neither the Appeals Court nor the Supreme Judicial Court has held that periodic payments under Section 5(e) may be reduced on the basis of evidence of unaffordability. This is partly subject of a pending appeal in this Court. See *Federal National Mortgage Ass’n v. Anthony Michael Branch*, 2019-P-0004, Jan. 29, 2019 Order (reporting to the Court, among other things, the question of whether a judge may consider “a defendant’s ability to pay and financial hardship”).

The leading case that bears on this issue, *Kargman v. Dustin*, is frequently miscited to mean that a judge may waive any or all portion of the periodic payments becoming due under Section 5(e) on the basis of unaffordability. But there were two different types of periodic payments at issue in *Kargman*: the tenants’ base rental payments as provided in a lease with their landlord, and a

disputed rental increase amount that was the subject of the underlying litigation. See *Kargman*, 5 Mass. App. Ct. at 107. The Appeals Court noted that a requirement that a tenant pay his rent under a lease during the pendency of an appeal is a "reasonable limitation" and "by no means unfair to the tenant since he is being required to do no more than fulfill a contractual obligation which he voluntarily assumed at the outset of his tenancy." *Id.* at 110.

Thus, although the Court recognized that "a tenant suffering severe economic hardship [may] ... seek a waiver of both the standard appeal bond and a portion of his base rent in lieu of bond," its statements indicate that in most cases the tenant should be required to pay his base rent. *Id.* at 111 (emphasis added). The Court did not consider what type of "severe economic hardship" would justify a reduction of base rent, or how trial courts should calculate such reduction, as it was not an issue before the Court. See *id.* In contrast, it was the disputed rental increase that was at issue in the pending litigation that the Court identified as waiveable on account of unaffordability. *Id.* at 113-114 ("It is one thing to require a tenant as a condition of appeal to pay accruing rent which she has already contracted to pay in her lease. It is another to order the tenant, particularly one lacking sufficient funds, to pay the increase, the ultimate legality of which is the subject of pending litigation in another court.").

Accordingly, although *Kargman* is frequently cited for the argument that a judge may reduce periodic payments under Section 5(e) on the basis of unaffordability even to zero, *Kargman* does not actually stand for this principle. Conversely, *Kargman* suggests that base rent for a tenant (which equates to base fair rental value for a tenant at sufferance) should ordinarily be paid during an appeal where the bond has been waived. See *id.* at 110. And by no means did *Kargman* endorse an approach where a defendant would pay *nothing* to occupy the property. See *id.* at 110 (a conclusion that a tenant should pay base rent pending appeal even where the appeal bond has been waived is a “reasonable limitation,” and “[t]o reach a different conclusion would be to accord tenants squatters’ rights pending the resolution of their appeals.”).

Moreover, and critically, *Kargman* involved a bond limitation on tenants’ rights to a jury trial in the Superior Court. See *Kargman*, 5 Mass. App. Ct. at 107. Even in that context, the Appeals Court held that periodic payments pending appeal should be required, despite the potential effects on the tenants’ jury trial rights. In contrast, here (and in most cases), the periodic payments would arguably potentially limit *only* King’s appeal to this Court from the judgment in the Western Housing Court, not a jury trial in the Superior Court. There is no constitutional right to a civil appeal in Massachusetts. See, e.g., *Commonwealth v. Bruneau*, 472 Mass. 510, 513 (2015) (“There is no constitutional

right to appeal from a criminal conviction." (citing *Dickerson v. Attorney Gen.*, 396 Mass. 740, 743 n.3 (1986) ("The due process clause does not require a State to afford any appellate process whatsoever"))).

Thus, even assuming that *Kargman* suggests that periodic payments may in unusual situations be reduced for hardship, this was restricted to bonds that limited a jury trial right, not civil appeals. Factoring in that an appeal bond here would have no effect on any of King's constitutional rights, there would be even less reason to reduce his periodic payments.

Accordingly, this Court should not reduce the \$4,000 periodic payments that King is required to pay pending his appeal on the basis of claimed unaffordability. Plaintiff notes that this amount does not even include other carrying costs associated with the property, such as taxes and utilities, that Plaintiff will be required to pay in full or in part during the appeal. See *U.S. Bank Trust v. Minnehan*, 95 Mass. App. Ct. 1123, 2019 WL 3763958, at \*2 (Mass. App. Ct. Aug. 9, 2019) (unpublished) (noting that trial judge's fair rental value estimate for post-foreclosure appeal bond was "less than the [defendants] would have been required to pay monthly as debt service together with taxes, had foreclosure not occurred") (implying that this evidences the reasonableness of the bond amount).

Finally, the \$4,000 required payments are less than what was owed as a monthly payment under the subject mortgage if the mortgage had never been foreclosed, without even considering taxes and other attendant costs of ownership. See Plaintiff's Motion to Set Bond, p. 2 (at time of default monthly mortgage payments were \$4,618.77). In short, the \$4,000 per month requirement is reasonable and necessary to protect Plaintiff's rights and interests during what is expected to be at least a year-long appeal.

#### CONCLUSION

Plaintiff requests that the Single Justice affirm the Western Housing Court's October 31, 2019 Appeal Bond Order.

Respectfully Submitted,

Bank of New York Mellon f/k/a The Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7,

By its attorneys,

/s/ Christine M. Kingston  
Carl E. Fumarola (BBO #659019)  
Christine M. Kingston (BBO #682962)  
Nelson Mullins Riley & Scarborough LLP  
One Post Office Square, 30th Floor  
Boston, MA 02109  
617-217-4700 (phone)  
carl.fumarola@nelsonmullins.com  
christine.kingston@nelsonmullins.com

Dated: December 5, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 5, 2019 a true and accurate copy of the foregoing document has been served upon counsel of record identified below, via first-class mail and electronic mail as follows:

Lucas Boyd McArdle  
280 Merrimack St Suite 321  
Lawrence, MA 01843  
[luke@mcardlelaw.com](mailto:luke@mcardlelaw.com)

/s/ Christine M. Kingston  
Christine M. Kingston

# EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

BANK OF NEW YORK MELLON f/k/a THE BANK  
OF NEW YORK, AS TRUSTEE ON BEHALF OF  
THE REGISTERED HOLDERS OF ALTERNATIVE  
LOAN TRUST 2006-J7, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2006-J7,

Plaintiff,

v.

TERRI A. MAYES-KING, et al.,

Defendants.

Docket No. 19H79SP000190

**AFFIDAVIT OF JAMES COOMBS**

I, James Coombs, do hereby state as follows:

1. I have personal knowledge of the matters set forth in this Affidavit.
2. I am over the age of 18, of sound mind, and able to make this Affidavit.
3. I am a realtor employed at Coldwell Banker Residential Brokerage, 136 Dwight Road, Longmeadow, Massachusetts.
4. I am a licensed real estate broker in the Commonwealth of Massachusetts. My license number is 009522760.
5. I have been a licensed real estate broker in the Commonwealth of Massachusetts since 2011. I have considerable experience and expertise in both sales and rentals in and around Longmeadow, Massachusetts.
6. On September 5, 2019, I inspected the interior and exterior of the property located at 49 Memery Lane, Longmeadow, Massachusetts (the "Property").

7. Based upon my interior inspection of the Property, the property is a good condition single family colonial style home with 7540 sq ft of living area. Property consists of five bedrooms, five bathrooms, and a half bath. Property also has an indoor basketball court, in-law style apartment, and three car attached garage.

8. During my interior and exterior inspection of the Property, I observed that the Property is in good to excellent condition with only extremely minor cosmetic needs in some areas. I observed no conditions at the Property that in my opinion and experience as a real estate broker would constitute a threat or danger to safety.

9. In addition to my inspection of the Property, I have also viewed comparable properties in the area listed for sale and rent.

10. Based upon my exterior and interior inspection of the Property, and a comparison to other similar properties in the area, which I have enclosed herewith, I believe that the fair market rental value of the Property is approximately \$5,000 per month.

Signed under the pains and penalties of perjury, this 12 day of September 2019.

  
\_\_\_\_\_  
James Coombs



**MLS # 72518933 - Active**

**Rental - Single Family**

995 Frank Smith Rd  
Longmeadow, MA 01106-2962  
Hampden County

Rent: \$2,850

Unit Level: 1  
Grade School: Wolf Swamp  
Middle School: Glenbrook  
High School: LHS  
Outdoor Space Available:  
Directions: Close to Wolf Swamp School

Total Rooms: 8  
Bedrooms: 4  
Bathrooms: 2f 1h  
Master Bath: Yes  
Fireplaces: 1

1 of 30

**Remarks**

Rare Opportunity to Rent this BEAUTIFUL 4 Bedroom 2.5 bath Colonial Home. This Well Cared for Home Offers Wood Floors Throughout, Beautiful and Spacious Kitchen with Granite Counters and Access to the Backyard Private Deck, Living Room with Handsome Fireplace, First floor Laundry and a 2 Car Attached Garage. The 2nd Level Offers 4 Generous Size Bedrooms and 2 Updated Baths. Other Features includes Central Air and Lead Certificate. This Home is Close to all that Longmeadow Has to Offer!!!!

**Property Information**

Approx. Living Area: 2,232 Sq. Ft.	Approx. Lot Size: 30,000 Sq. Ft.	Parking Spaces: 4
Living Area Includes:	Heating: Gas	Garage Spaces: 2 Attached
Living Area Source: Field Card	Air Cond: Yes	
Living Area Disclosures:		
Disclosures:		

**Rental Information**

For Sale: No	First Mon Rent Req'd: Yes	Last Mon Rent Req'd: Yes
Association: No	Security Deposit Req'd: Yes/\$2,850	Lease Terms:
Date Available: Now	Rent Terms: Lease	Term of Rental (months): 12+
Date Avail. Note:	List Bkge. Fee Req. from Tenant: No	Insurance Req'd: Yes
References Req'd: Yes		Smoking Allowed: No
Pets Allowed: No		

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Flooring - Wood
Dining Room:	1		Flooring - Wood
Kitchen:	1		Countertops - Stone/Granite/Solid
Master Bedroom:	2		Bathroom - Full, Closet, Flooring - Wood
Bedroom 2:	2		Closet, Flooring - Wood
Bedroom 3:	2		Closet, Flooring - Wood
Bedroom 4:	2		Closet, Flooring - Wood
Bath 1:	1		Bathroom - Half
Bath 2:	2		Bathroom - Full
Bath 3:	2		Bathroom - Full
Laundry:	1		-

**Features**

Appliances: Range, Dishwasher, Refrigerator  
Area Amenities: Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Golf Course, Highway Access, House of Worship, Private School, Public School, University  
Basement: Yes Full  
Beach - Miles to:  
Exterior Features: Deck  
Interior Bldg Feat:  
Rent Fee Includes: Occupancy Only  
Waterfront: No  
Water View: No

**Other Property Info**

Lead Paint: Certified Treated  
Disclosure Declaration: No  
Elevator: No  
Furnished: No  
Laundry Features: In Building  
Pin #: M:0330 B:0282 L:0057  
UFFI:  
Year Built: 1977 Source: Public Record  
Year Built Description: Approximate  
Year Round: Yes

**Office/Agent Information**

Listing Office: Keller Williams Realty (413) 565-5478  
Listing Agent: Paul Zingarelli (413) 246-9982  
Team Member(s):  
Sale Office:  
Sale Agent:  
Listing Agreement Type: Exclusive Right to Rent  
Entry Only: No

Compensation  
Cooperating Compensation: half

Showing: **Lock Box, Appointment Required, Sign, ~~or~~ Schedule with Showing Time** or call 888-627-2775  
Special Showing Instructions:

**Firm Remarks**

Lease to begin July 15th if available.

**Market Information**

Listing Date: **6/14/2019**

Days on Market: Property has been on the market for a total of **90** day(s)

Expiration Date:

Original Price: **\$2,850**

Off Market Date:

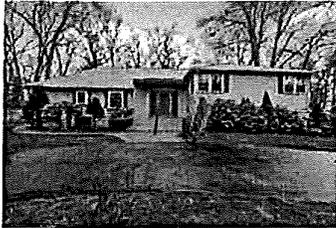
Listing Market Time: MLS# has been on for **90** day(s)

Office Market Time: Office has listed this property for **90** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:

The information in this listing was gathered from third party sources including the seller and public records. MLS Property Information Network and its subscribers disclaim any and all representations or warranties as to the accuracy of this information. Content ©2019 MLS Property Information Network, Inc.



MLS # 72493668 - Active

Rental - Single Family

97 Lynnwood Drive  
 Longmeadow, MA 01106  
 Hampden County  
 Unit Level: 1  
 Grade School: Blueberry Hill  
 Middle School: Williams  
 High School: Longmeadow High  
 Outdoor Space Available: Yes - Private  
 Handicap Access/Features: No  
 Directions: Off Bliss or Williams.

Rent: \$3,300

Total Rooms: 10  
 Bedrooms: 4  
 Bathrooms: 3f 1h  
 Master Bath: Yes  
 Fireplaces: 1

1 of 27

**Remarks**

Exceptional 10+ room, 4+bdrm, 3.5 bath home w/ contemporary flair offers 4000 SF finished living area and can work well for combined generation living. Over \$150K spent on quality improvements since 2007. Custom kitchen w/ beautiful details, granite counters, tile back splash, stainless steel appliances, pantry storage, comfy window seat, updated lav & tiled hallway bath. Soft color palette, hardwood floor added in LR, new laminate flooring in 2 BRs (2018), high efficiency furnace, replacement windows, replaced roof and vinyl siding add to amazing value here! Potential home office area and/or in-law area w/separate entrance, tiled room w/closet, shower bath & 2 lower level carpeted rooms. Top level has BR w/cedar closet. Screened porch, flagstone/cement double patio, IG sprinklers too! Centrally located near schools, shops, town services, parks & athletic fields. Generous yard for sports, gardens, etc. Circular & side driveways offer ample off-street parking. Possible rent to own.

**Property Information**

Approx. Living Area: 2,680 Sq. Ft.      Approx. Lot Size: 26,828 Sq. Ft.      Parking Spaces: 8 Off-Street, Paved Driveway  
 Living Area Includes:      Heating: Gas, Forced Air      Garage Spaces: 2 Attached, Garage Door Opener  
 Living Area Source: Appraiser      Air Cond: Yes  
 Living Area Disclosures: Stated area does not include lower levels and top floor, all together there is over 4000SF  
 Disclosures: Sprinkler system refurbished in 2017. Intercom/alarm system never used by Sellers, may be inoperable. Top floor BR safe will stay. Basement refrigerator remains. Includes washer and dryer. Owner provides lawn care, spring clean up & fertilization, snow plowing & water/sewer.

**Rental Information**

For Sale: Yes	First Mon Rent Reqd: Yes	Last Mon Rent Reqd: Yes
Association: No	Security Deposit Reqd: Yes/\$3,300	Lease Terms:
Date Available: Now	Rent Terms: Lease	Term of Rental (months): 12+
Date Avail.Note:	List Bkge. Fee Req. from Tenant: No	Insurance Reqd: Yes
References Reqd: Yes		Smoking Allowed: No
Pets Allowed: No		

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	2		Fireplace, Flooring - Hardwood, Sunken
Dining Room:	2		Flooring - Stone/Ceramic Tile
Family Room:	2		Closet/Cabinets - Custom Built, Flooring - Stone/Ceramic Tile
Kitchen:	2		Flooring - Stone/Ceramic Tile, Window(s) - Bay/Bow/Box, Dining Area, Countertops - Stone/Granite/Solid, Countertops - Upgraded, Kitchen Island, Breakfast Bar / Nook, Cabinets - Upgraded, Recessed Lighting, Remodeled, Stainless Steel Appliances
Master Bedroom:	3		Bathroom - Full, Closet - Linen, Flooring - Laminate
Bedroom 2:	3		Flooring - Laminate
Bedroom 3:	3		Flooring - Stone/Ceramic Tile
Bedroom 4:	4		Closet - Cedar
Bedroom 5:	1		Flooring - Vinyl
Bath 1:	3		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 2:	3		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 3:	2		Bathroom - Half, Flooring - Stone/Ceramic Tile
Laundry:	1		-
Bathroom:	1		Bathroom - Full, Flooring - Stone/Ceramic Tile
Other:	B		Flooring - Wall to Wall Carpet
Office:	1		Flooring - Vinyl
Play Room:	B		Flooring - Wall to Wall Carpet

**Features**

Appliances: Wall Oven, Dishwasher, Disposal, Microwave, Refrigerator, Washer, Dryer  
 Area Amenities: Shopping, Tennis Court, Park, Walk/Jog Trails, Golf Course, Medical Facility, Bike Path, Highway Access, House of Worship, Private School, Public School, University  
 Basement: Yes Partially Finished, Interior Access, Concrete Floor  
 Beach - Miles to:  
 Exterior Features: Porch - Enclosed, Patio, Gutters, Sprinkler System, Screens, Fenced Yard  
 Interior Bldg Feat: Cable TV Available  
 Rent Fee Includes: Water, Refuse Removal  
 Waterfront: No

**Other Property Info**

Adult Community: No  
 Lead Paint: Unknown  
 Disclosure Declaration: No  
 Elevator: No  
 Facing Direction: West  
 Laundry Features: In Building  
 Pin #:

UFFI: **Unknown**  
Year Built: **1958**  
Source:  
Year Built Description:  
**Actual**  
Year Round: **Yes**

**Office/Agent Information**

Listing Office: **William Raye's R.E. & Home Services [R]** (413) 565-2111      **Compensation**  
Listing Agent: **Suzanne White Group [M]** (413) 530-7363      Cooperating Compensation: **half month**  
Team Member(s): **Suzanne S. White [R]** [M] (413) 530-7363  
Sale Office:  
Sale Agent:  
Listing Agreement Type: **Exclusive Right to Rent**  
Entry Only: **No**  
Showing: **Appointment Required, [M] Schedule with Showing Time** or call 888-627-2775  
Special Showing Instructions: **Please remove shoes upon entering.**

**Market Information**

Listing Date: **5/3/2019**      Listing Market Time: MLS# has been on for **132** day(s)  
Days on Market: Property has been on the market for a total of **132** day(s)      Office Market Time: Office has listed this property for **132** day(s)  
Expiration Date:  
Original Price: **\$3,000**      Cash Paid for Upgrades:  
Off Market Date:      Seller Concessions at Closing:



**MLS # 72474559 - Rented  
Rental - Single Family**

**33 Osceola Lane - Unit 0  
Longmeadow, MA 01106  
Hampden County**

Rent: **\$2,800**  
Rented Price: **\$2,800**

Unit Level: **1**  
Grade School: **Blueberry**  
Middle School: **Williams**  
High School: **LHS**  
Outdoor Space Available: **Yes - Private**  
Directions: **Off Hopkins Place near Lynnwood.**

Total Rooms: **9**  
Bedrooms: **4**  
Bathrooms: **2f 1h**  
Master Bath: **Yes**  
Fireplaces: **3**

◀ 1 of 14 ▶

**Remarks**

**Spacious and comfortable Colonial in the center of town in Blueberry School District. All schools, Bliss Park, and shopping area are one mile away or less. Beautifully remodeled kitchen, master bathroom and half bath. Stainless steel appliances in kitchen with granite counters. 4 Spacious bedrooms with ample closets, One of the 3 fireplaces (living room) is decorative only. Local Landlord requires first, last, and security deposit for qualified tenant with excellent credit history and references. Small dog or cat allowed. No smoking in property. Tenant to maintain grounds, snow removal and mowing as needed.**

**Property Information**

Approx. Living Area: **2,443 Sq. Ft.**      Approx. Lot Size: **16,881 Sq. Ft.**      Parking Spaces: **6 Off-Street**  
Living Area Includes:      Heating: **Gas, Hot Water Baseboard**      Garage Spaces: **2 Attached, Garage Door Opener**

Living Area Source: **Field Card**      Air Cond: **Yes**  
Living Area Disclosures: **Does not include finished room in basement.**

Disclosures: **Lead paint risk assessment notes that a small area around some windows are affected.**

**Rental Information**

For Sale: **No**      First Mon Rent Req'd: **Yes**      Last Mon Rent Req'd: **Yes**  
Association: **No**      Security Deposit Req'd: **Yes/\$2,800**      Lease Terms:  
Date Available: **4/5/2019**      Rent Terms: **Lease**      Term of Rental (months): **12+**  
Date Avail. Note:      List Bkge. Fee Req. from Tenant: **No**      Insurance Req'd: **Yes**  
References Req'd: **Yes**      Smoking Allowed: **No**  
Pets Allowed: **Yes w/ Restrictions - Other (See Remarks)**

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Flooring - Hardwood, Open Floor Plan
Dining Room:	1		Open Floor Plan
Family Room:	1		Fireplace, Flooring - Wall to Wall Carpet
Kitchen:	1		Dining Area, Countertops - Stone/Granite/Solid, Cabinets - Upgraded, Remodeled, Stainless Steel Appliances
Master Bedroom:	2		Bathroom - Full, Closet, Flooring - Hardwood
Bedroom 2:	2		Closet, Flooring - Hardwood
Bedroom 3:	2		Closet, Flooring - Hardwood
Bedroom 4:	2		Closet, Flooring - Hardwood
Bath 1:	1		Bathroom - Half, Flooring - Stone/Ceramic Tile, Remodeled
Bath 2:	2		Bathroom - Full, Flooring - Stone/Ceramic Tile
Bath 3:	2		Bathroom - Full, Flooring - Stone/Ceramic Tile, Remodeled
Laundry:	1		-
Sun Room:	1		Skylight, Flooring - Hardwood
Game Room:	B		Flooring - Vinyl
Foyer:	1		Flooring - Stone/Ceramic Tile

**Features**

Appliances: **Range, Dishwasher, Disposal, Refrigerator, Washer, Dryer**  
Area Amenities: **Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Golf Course, Medical Facility, Bike Path, Conservation Area, Highway Access, House of Worship, Public School, University**  
Association Pool: **No**  
Basement: **Yes Full, Partially Finished, Bulkhead**  
Beach - Miles to:  
Exterior Features: **Porch, Patio**  
Interior Bldg Feat: **Cable TV Available**  
Rent Fee Includes: **Water, Sewerage Disposal, Refuse Removal**  
Waterfront: **No**  
Water View: **No**

**Other Property Info**

Adult Community: **No**  
Lead Paint: **Yes**  
Disclosure Declaration: **Yes**  
Elevator: **No**  
Facing Direction: **Southwest**  
Furnished: **No**  
Laundry Features: **In Building**  
Pin #:  
UFFI: **No**  
Year Built: **1962** Source: **Public Record**  
Year Built Description: **Actual**  
Year Round: **Yes**

**Office/Agent Information**

Listing Office: **William Raveis R.E. & Home Services**  (413) 565-2111  
Listing Agent: **Roberta Orenstein**   (413) 575-0952

Compensation  
Cooperating Compensation: **1/2 Mo.**

Team Member(s):

Sale Office: **Coldwell Banker Residential Brokerage - Longmeadow**  (413) 567-8931

Sale Agent: **Colleen Westberg**   (413) 531-6073

Listing Agreement Type: **Exclusive Right to Rent**

Entry Only: **No**

Showing: **Lock Box, Appointment Required**

Special Showing Instructions: **Text LA, 413-575-0952**

**Market Information**

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Listing Date: **4/2/2019**

Days on Market: Property has been on the market for a total of **5** day(s)

Expiration Date:

Original Price: **\$2,800**

Off Market Date: **4/7/2019**

Rental Date: **5/1/2019**

Sale Price: **\$2,800**

Listing Market Time: MLS# has been on for **5** day(s)

Office Market Time: Office has listed this property for **5** day(s)

Cash Paid for Upgrades:

Seller Concessions at Closing:

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**MLS # 72494637 - Rented  
Rental - Single Family**

**59 Blueberry Hill Rd  
Longmeadow, MA 01106-1662  
Hampden County**  
Unit Level: 1  
Grade School: **Blueberry Hill**  
Middle School: **Williams**  
High School: **LHS**  
Outdoor Space Available: **Yes - Private**  
Directions: **Off Bliss or Converse**

Rent: **\$3,300**  
Rented Price: **\$3,300**  
Total Rooms: **8**  
Bedrooms: **4**  
Bathrooms: **3f 1h**  
Master Bath: **Yes**  
Fireplaces: **2**

1 of 18

**Remarks**

Spacious sunny Colonial in great condition with wonderful open floor plan. Updated eat-in kitchen with loads of cabinet space, stainless steel appliances, granite counter tops, and center island. Kitchen opens to family room. Front to back living room with fireplace. Formal dining room. 1st floor laundry room. Four nice size bedrooms and 2 full baths on 2nd floor. Large Master Bedroom with gas fireplace and a wall of closets. Most rooms freshly painted. Recently refinished hardwood floors throughout. 2 nicely finished rooms in basement with 3/4 bath. Gas heat. Central air conditioning. 2 car attached garage. Gorgeous 1/2 acre yard with pond and tree house. Huge deck with hot tub. Excellent location close to the Longmeadow Shoppes and highly desirable schools- Blueberry Hill ES, Williams MS and LHS.

**Property Information**

Approx. Living Area: **2,516 Sq. Ft.**      Approx. Lot Size: **21,406 Sq. Ft.**      Parking Spaces: **4 Paved Driveway**  
Living Area Includes:      Heating: **Gas, Forced Air**      Garage Spaces: **2 Attached, Garage Door Opener**

Living Area Source: **Field Card**

Air Cond: **Yes**

Living Area Disclosures: **Does not include finished rooms and 3/4 bath in finished basement.**

Disclosures: **Tenant may use hot tub & tree house at their own risk & expense. Washer & dryer are current tenants & will be replaced for new tenants. Alarm wired but tenant must incur any activation/ monitoring expenses. Owners maintain pond & does seasonal yard cleanup. Tenant maintains lawn & does snow removal.**

**Rental Information**

For Sale: **No**      First Mon Rent Req'd: **Yes**      Last Mon Rent Req'd: **Yes**  
Association: **No**      Security Deposit Req'd: **Yes/\$3,300**      Lease Terms:  
Date Available: **8/1/2019**      Rent Terms: **Lease**      Term of Rental (months): **12**  
Date Avail. Note:      List Bkge. Fee Req. from Tenant: **No**      Insurance Req'd: **Yes**  
References Req'd: **Yes**      Smoking Allowed: **No**  
Pets Allowed: **Yes w/ Restrictions - Pets Negotiable**

**Room Levels, Dimensions and Features**

Room	Level	Size	Features
Living Room:	1		Fireplace, Flooring - Hardwood
Dining Room:	1		Flooring - Hardwood
Family Room:	1		Flooring - Hardwood
Kitchen:	1		Flooring - Hardwood, Dining Area, Countertops - Stone/Granite/Solid, Kitchen Island, Exterior Access, Recessed Lighting, Stainless Steel Appliances
Master Bedroom:	2		Bathroom - 3/4, Fireplace, Closet, Flooring - Hardwood
Bedroom 2:	2		Closet, Flooring - Hardwood
Bedroom 3:	2		Closet, Flooring - Hardwood
Bedroom 4:	2		Closet, Flooring - Hardwood
Bath 1:	1		Bathroom - Half, Flooring - Stone/Ceramic Tile
Bath 2:	2		Bathroom - Full, Bathroom - Tiled With Tub & Shower, Flooring - Stone/Ceramic Tile, Countertops - Stone/Granite/Solid
Bath 3:	2		Bathroom - 3/4, Bathroom - Tiled With Shower Stall, Flooring - Stone/Ceramic Tile, Countertops - Stone/Granite/Solid
Laundry:	1		Dryer Hookup - Electric, Washer Hookup
Play Room:	B		Flooring - Wall to Wall Carpet, Recessed Lighting, Walk-in Storage
Bonus Room:	B		Flooring - Wall to Wall Carpet
3/4 Bath:	B		Bathroom - With Shower Stall

**Features**

Appliances: **Range, Dishwasher, Disposal, Microwave, Refrigerator, Washer, Dryer**  
Area Amenities: **Public Transportation, Shopping, Swimming Pool, Tennis Court, Park, Walk/Jog Trails, Stables, Golf Course, Medical Facility, Bike Path, Conservation Area, Highway Access, House of Worship, Marina, Private School, Public School, University**  
Basement: **Yes Full, Finished, Bulkhead**  
Beach - Miles to:  
Exterior Features: **Deck, Hot Tub/Spa, Professional Landscaping, Fenced Yard**  
Interior Bldg Feat: **Security System, Elevator**  
Rent Fee Includes: **Water, Sewerage Disposal**  
Waterfront: **No**

**Other Property Info**

Lead Paint: **Unknown**  
Disclosure Declaration: **No**  
Elevator: **No**  
Facing Direction: **West**  
Furnished: **No**  
Laundry Features: **In Unit**  
Pin #: **M:0087 B:0099 L:0058**  
UFFI:  
Year Built: **1972**  
Source: **Public Record**

Year Built Description:  
**Actual**  
 Year Round: **Yes**

**Office/Agent Information**

Listing Office: **Coldwell Banker Residential Brokerage - Longmeadow**  (413) 567-8931 **Compensation**  
 Listing Agent: **Lisa Guardione**   (413) 575-0563 **Cooperating Compensation: 1/2 month**  
 Team Member(s):  
 Sale Office: **Coldwell Banker Residential Brokerage - Longmeadow**  (413) 567-8931  
 Sale Agent: **Mark Kula**   (413) 272-8802  
 Listing Agreement Type: **Exclusive Right to Rent**  
 Entry Only: **No**  
 Showing: **Call List Agent, Appointment Required**  
 Special Showing Instructions: **Text/call Lisa at 413-575-0563 or lguardione@gmail.com. Day before notice due to tenants.**

**Market Information**

Listing Date: <b>5/6/2019</b>	Listing Market Time: MLS# has been on for <b>10</b> day(s)
Days on Market: Property has been on the market for a total of <b>10</b> day(s)	Office Market Time: Office has listed this property for <b>10</b> day(s)
Expiration Date:	Cash Paid for Upgrades:
Original Price: <b>\$3,300</b>	Seller Concessions at Closing:
Off Market Date: <b>5/16/2019</b>	
Rental Date: <b>6/6/2019</b>	
Sale Price: <b>\$3,300</b>	

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# EXHIBIT 2

# *Rinaldi* ENGINEERING

CHARLES A. RINALDI, P.E.  
171 Oldefield Farms  
Enfield, CT 06082  
tel. 860-924-6350  
email: c.rinaldi@cox.net

September 5, 2019

**Structural Assessment  
of  
Roof Framing Above the Basketball Court  
at  
49 MEMERY LANE, LONGMEADOW, MA**

Performed for:

Baylie Helitzer, InteriorWorx  
20620 N. 19<sup>th</sup> Avenue, Ste 110  
Phoenix, AZ 85027

Today, I performed a structural inspection of the roof framing above the basketball court of the house at the above location. The purpose of the inspection was to evaluate the structural integrity of the framing and ascertain the safety of the basketball court addition. The original house was built in 2004 and the addition was added in 2006. This report is limited to the structural condition of the said roof framing.

The addition measures 42' x 72'. The roof was built with 42' long wood, factory built trusses fabricated such that rooms could be built within them. Living space, consisting of an apartment, was in fact built and finished within the trusses. The bottoms of the trusses support the ceiling of the basketball court and the floor of the apartment. The tops of the trusses support the roof.

Although the living area above the basketball court is all finished area, four holes were cut by the owner, in the knee walls allowing limited observation of the eave portion of the trusses. I was able to look in and observe from those points with a flashlight. I saw the original trusses and the new (2018) trusses of the same style and size adjacent to the original trusses, nailed together, thereby providing two trusses every 24". In my very limited observation of the trusses, I saw no broken or cracked truss members, no misaligned or failing press-on connectors (splice plates), or any other deficiency.

The owner provided the new truss drawings prepared by Mitek USA, Inc. from Chesterfield MO, which were stamped by Massachusetts Professional Engineer, Xuegang Liu. Such truss drawings are usually required by the municipality. I studied the drawings and found that Liu had provided detailed drawings of the trusses with dimensions to an accuracy of 1/16".

All the splice plates were sized and the members were sized. The lumber was specified. All the design loads were noted including a 35 psf snow load, a top chord dead load of 21 psf, a bottom chord dead load of 21 psf, a bottom chord live load of 40 psf in room areas, and a 20 psf live load in attic storage areas. Unbalanced snow loads were considered. In addition, the apartment areas were designed to deflect less than the length divided by 360, a common conservative measure of deflection (sag).

I also observed the interior walls, ceilings, and floors. I observed the wall/ceiling joints, the wall/floor joints, the ceilings, the floors, the windows, and the doors. With the aid of a 6' level I found the floors to be level and the walls to be plumb. I also observed the exterior of the addition. I found the ridge to be straight and level. I found the plane of the roof to be perfectly flat. A roof structure that is not structurally sound would exhibit a sagged ridge and the plane of the roof would have noticeable dips. I note that the addition has seen a full winter (2018-2019).

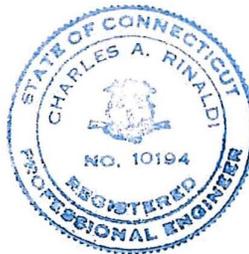
In summary I found no defects, no deficiencies, no cracks, no signs of deflection, no signs of separation in the walls, floors, or ceilings. I found nothing to suggest that there is any structural deficiency. **In my opinion the basketball court addition is structurally sound and safe to occupy.**

If you need further clarification please contact me. Thank you for allowing me to be of service.

Truly,



Charles A. Rinaldi, P.E.





**MiTek USA, Inc.**

16023 Swingley Ridge Rd  
Chesterfield, MO 63017  
314-434-1200

Re: KC3736  
Attic Truss

The truss drawing(s) referenced below have been prepared by MiTek USA, Inc. under my direct supervision based on the parameters provided by Western Mass Truss Co. Inc..

Pages or sheets covered by this seal: I32060299 thru I32060302

My license renewal date for the state of Massachusetts is December 31, 2019



*Xuegang Liu*

January 4, 2018

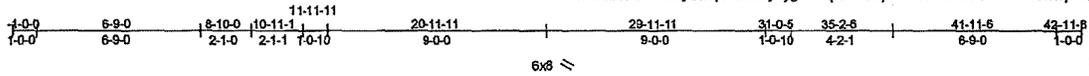
Liu, Xuegang

**IMPORTANT NOTE:** Truss Engineer's responsibility is solely for design of individual trusses based upon design parameters shown on referenced truss drawings. Parameters have not been verified as appropriate for any use. Any location identification specified is for file reference only and has not been used in preparing design. Suitability of truss designs for any particular building is the responsibility of the building designer, not the Truss Engineer, per ANSI/TPI-1, Chapter 2.

Job KC3736	Truss T-1	Truss Type ROOF TRUSS	Qty 29	Ply 2	Attic Truss	132060301
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VMT, WMA

8:030 s Aug 11 2017 MiTek Industries, Inc. Thu Jan 04 10:45:38 2018 Page 1  
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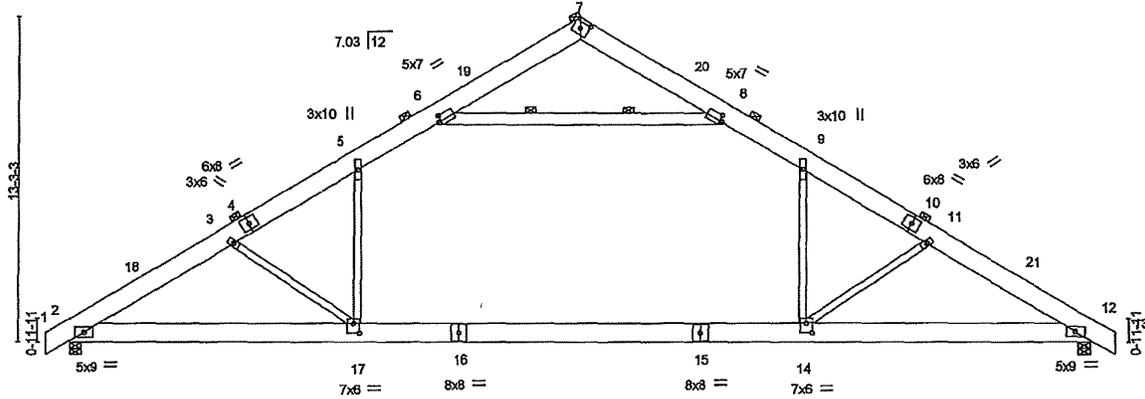


Plate Offsets (X,Y)	16:0-1-4, 0-3-0, 17:0-4-6, 0-3-0, 18:0-1-4, 0-3-0, 114:0-3-0, 0-4-12, 117:0-3-0, 0-4-12
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LOADING (psf)	SPACING-	3-0-0	CSI.	DEFL.	in (loc)	I/defl	L/d	PLATES	GRIP
TCLL 35.0 (Roof Snow=35.0)	Plate Grip DOL	1.15	TC 0.42	Vert(LL)	-0.56 14-17	>886	360	MT20	169/123
TCDL 10.0	Lumber DOL	1.15	BC 0.49	Vert(TL)	-0.79 14-17	>633	240		
BCLL 0.0 *	Rep Stress Incr	NO	WB 0.63	Horz(TL)	0.07 12	n/a	n/a		
BCDL 10.0	Code IRC2009/TPI2007		Matrix-SH	Wind(LL)	0.06 14-17	>999	240	Weight: 829 lb	FT = 3%

LUMBER-  
TOP CHORD 2x10 SP 2400F 2.0E  
BOT CHORD 2x10 SP 2400F 2.0E  
WEBS 2x4 SPF No.2 \*Except\*  
6-8: 2x6 SPF-S No.2

BRACING-  
TOP CHORD 6-0-0 oc bracing  
(Switched from sheeted: Spacing > 2-8-0). Except:  
6-0-0 oc bracing: 2-7, 7-12  
10-0-0 oc bracing: 1-2, 12-13  
Rigid ceiling directly applied or 10-0-0 oc bracing.  
2 Rows at 1/3 pts 6-8

REACTIONS. (lb/size) 2=4824/0-5-8, 12=4824/0-5-8  
Max Uplift 2=939(LC 4), 12=939(LC 4)

FORCES. (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
TOP CHORD 2-3=8366/1285, 3-5=7431/1131, 5-6=5781/1178, 6-7=303/499, 7-8=303/499,  
8-9=5781/1178, 9-11=7431/1131, 11-12=8366/1285  
BOT CHORD 2-17=839/6868, 14-17=427/5892, 12-14=839/6868  
WEBS 9-14=2/2570, 5-17=2/2570, 3-17=1501/508, 11-14=1501/508, 6-8=6173/1030

The main truss

NOTES-

- 2-ply truss to be connected together with 10d (0.148"x3") nails as follows:  
Top chords connected as follows: 2x10 - 2 rows staggered at 0-9-0 oc.  
Bottom chords connected as follows: 2x10 - 2 rows staggered at 0-9-0 oc.  
Webs connected as follows: 2x4 - 1 row at 0-9-0 oc, 2x6 - 2 rows staggered at 0-9-0 oc.
- All loads are considered equally applied to all plies, except if noted as front (F) or back (B) face in the LOAD CASE(S) section. Ply to ply connections have been provided to distribute only loads noted as (F) or (B), unless otherwise indicated.
- Wind: ASCE 7-05; 110mph; TC DL=6.0psf; BC DL=6.0psf; h=25ft; Cat. II; Exp C; enclosed; C-C Exterior(2) -1-0-0 to 3-2-6, Interior(1) 3-2-6 to 16-9-5, Exterior(2) 16-9-5 to 20-11-11, Interior(1) 25-2-1 to 38-9-0; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
- TCLL: ASCE 7-05; Pf=35.0 psf (flat roof snow); Category II; Exp C; Partially Exp.; Ct=1.1
- Unbalanced snow loads have been considered for this design.
- This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 35.0 psf on overhangs non-concurrent with other live loads.
- \* This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-6-0 tall by 1-0-0 wide will fit between the bottom chord and any other members.
- Ceiling dead load (5.0 psf) on member(s). 5-6, 8-9, 6-8
- Bottom chord live load (40.0 psf) and additional bottom chord dead load (0.0 psf) applied only to room. 14-17
- Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 939 lb uplift at joint 2 and 939 lb uplift at joint 12.
- Graphical purlin representation does not depict the size or the orientation of the purlin along the top and/or bottom chord.
- Where diaphragm blocking is required at pitch breaks, stabilizers may be replaced with wood blocking.
- NOTE: DUE TO THE OVERALL LENGTH TO DEPTH RATIO OF THE ROOM, THE FLOOR MAY EXHIBIT OBJECTIONABLE VIBRATION AND OR BOUNCE. BUILDING DESIGNER TO CONSIDER PROVIDING MEANS TO DAMPEN THESE EFFECTS. TRUSS DESIGN SHALL BE REVIEWED AND APPROVED PRIOR TO MANUFACTURING.
- Attic room checked for L/360 deflection.



Xinyi Lin  
January 4, 2018

**WARNING - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MII-7473 rev. 10/03/2015 BEFORE USE.**  
Design valid for use only with MITEK® connectors. This design is based only upon parameters shown, and is for an individual building component, not a truss system. Before use, the building designer must verify the applicability of design parameters and properly incorporate this design into the overall building design. Bracing indicated is to prevent buckling of individual truss web and/or chord members only. Additional temporary and permanent bracing is always required for stability and to prevent collapse with possible personal injury and property damage. For general guidance regarding the fabrication, storage, delivery, erection and bracing of trusses and truss systems, see ANS/ITPI Quality Criteria, DSB-89 and BCS1 Building Component Safety Information available from Truss Plate Institute, 218 N. Lee Street, Suite 312, Alexandria, VA 22314.

**MiTek**  
16023 Swingley Ridge Rd  
Chesterfield, MO 63017

Job KC3736	Truss GRD-1	Truss Type COMMON	Qty 2	Ply 2	Attic Truss	132060299
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WMT, WMA 8.030 s Aug 11 2017 Mitek Industries, Inc. Thu Jan 04 10:45:35 2018 Page 1  
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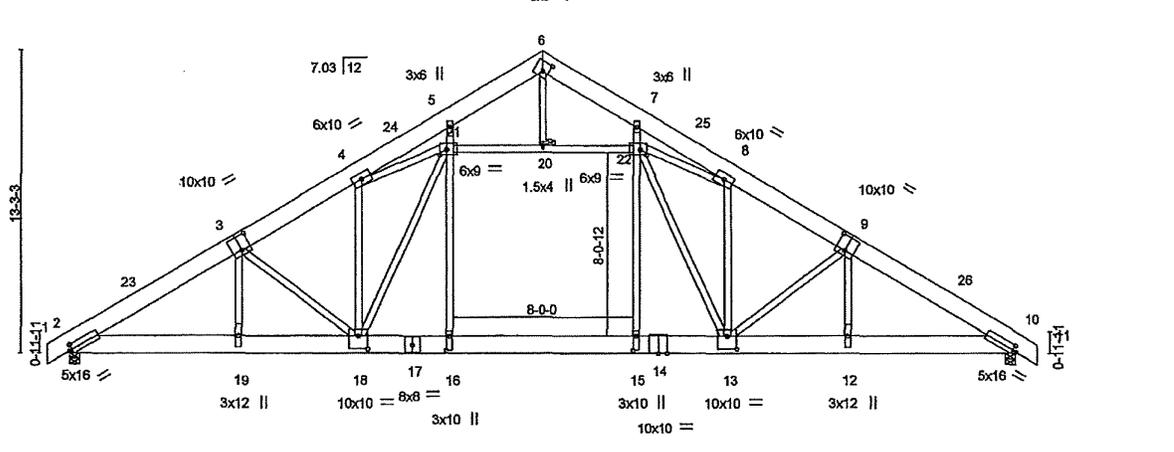
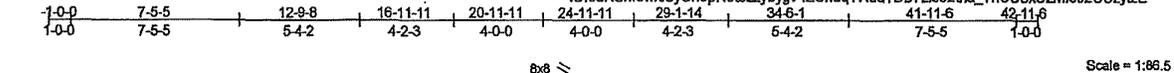


Plate Offsets (X,Y)-	[2:0-1-11,0-2-14], [3:0-5-0,0-7-8], [6:0-3-4,0-5-0], [9:0-5-0,0-7-8], [10:0-1-11,0-2-14], [13:0-5-0,0-6-12], [15:0-7-8,0-1-8], [16:0-7-8,0-1-8], [18:0-5-0,0-6-12]
	[21:0-3-8,0-2-12], [22:0-3-8,0-2-12]

LOADING (psf)	SPACING-	CSI.	DEFL.	PLATES	GRIP
TCLL 35.0	Plate Grip DOL 1.0-0	TC 0.23	in (loc) Vdefl L/d	MT20	197/144
(Roof Snow=35.0)	Lumber DOL 1.15	BC 0.42	Ver(LL) -0.17 15-16 >999 360		
TCDL 21.0	Rep Stress Incr NO	WB 0.90	Ver(TL) -0.47 15-16 >999 240		
BCLL 0.0	Code IRC2009/TP12007	Matrix-SH	Horz(TL) 0.15 10 n/a n/a		
BCDL 21.0			Wind(LL) 0.13 15-16 >999 240	Weight: 943 lb	FT = 3%

**LUMBER-**  
 TOP CHORD 2x10 SP 2400F 2.0E  
 BOT CHORD 2x10 SP 2400F 2.0E  
 WEBS 2x4 SPF No.2

**BRACING-**  
 TOP CHORD Sheathed or 6-0-0 oc purlins.  
 BOT CHORD Rigid ceiling directly applied or 10-0-0 oc bracing.

**REACTIONS.** (lb/size) 2=10794/0-5-8, 10=10794/0-5-8  
 Max Uplift 2=2399(LC 4), 10=2399(LC 4)

**FORCES.** (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
**TOP CHORD** 2-3=16804/3671, 3-4=14386/3205, 4-5=3944/856, 5-6=2966/712, 6-7=2966/712, 7-8=3944/856, 8-9=14386/3205, 9-10=16804/3671  
**BOT CHORD** 2-19=3029/14209, 18-19=3035/14241, 16-18=2414/11653, 15-16=2416/11660, 13-15=2414/11653, 12-13=3035/14241, 10-12=3029/14209  
**WEBS** 8-13=321/1701, 9-13=2348/570, 9-12=586/2872, 4-18=321/1701, 3-18=2348/570, 3-19=586/2872, 20-21=8636/2000, 20-22=8636/2000, 16-21=646/3334, 5-21=311/1729, 15-22=646/3334, 7-22=311/1729, 6-20=209/903, 4-21=9813/2270, 18-21=442/2091, 8-22=9813/2270, 13-22=442/2091

- NOTES-**
- 2-ply truss to be connected together with 10d (0.148"x3") nails as follows:  
 Top chords connected as follows: 2x10 - 2 rows staggered at 0-9-0 oc.  
 Bottom chords connected as follows: 2x10 - 2 rows staggered at 0-9-0 oc.  
 Webs connected as follows: 2x4 - 1 row at 0-9-0 oc.
  - All loads are considered equally applied to all plies, except if noted as front (F) or back (B) face in the LOAD CASE(S) section. Ply to ply connections have been provided to distribute only loads noted as (F) or (B), unless otherwise indicated.
  - Wind: ASCE 7-05; 110mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; enclosed; C-C Exterior(2) -1-0-0 to 3-2-6, Interior(1) 3-2-6 to 16-9-5, Exterior(2) 16-9-5 to 20-11-11, Interior(1) 25-2-0 to 38-9-0; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
  - TCLL: ASCE 7-05; Pf=35.0 psf (flat roof snow); Category II; Exp C; Partially Exp.; Ct=1.1
  - Unbalanced snow loads have been considered for this design.
  - This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 35.0 psf on overhangs non-concurrent with other live loads.
  - Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 2399 lb uplift at joint 2 and 2399 lb uplift at joint 10.
  - Where diaphragm blocking is required at pitch breaks, Stabilizers may be replaced with wood blocking.

**LOAD CASE(S)** Standard  
 1) Dead + Snow (balanced): Lumber Increase=1.15, Plate Increase=1.15

Continued on page 2



<p><b>WARNING - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MI-7473 rev. 10/03/2015 BEFORE USE.</b>          Design valid for use only with MITEK® connectors. This design is based only upon parameters shown, and is for an individual building component, not a truss system. Before use, the building designer must verify the applicability of design parameters and properly incorporate this design into the overall building design. Bracing indicated is to prevent buckling of individual truss web and/or chord members only. Additional temporary and permanent bracing is always required for stability and to prevent collapse with possible personal injury and property damage. For general guidance regarding the fabrication, storage, delivery, erection and bracing of trusses and truss systems, see ANS/TPH Quality Criteria, DSB-89 and BCSI Building Component Safety Information available from Truss Plate Institute, 218 N. Lee Street, Suite 312, Alexandria, VA 22314.</p>	<p>16023 Swingley Ridge Rd          Chesterfield, MO 63017</p>
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Job KC3736	Truss GT-2	Truss Type GABLE	Qty 2	Ply 1	Attic Truss	132060300
Job Reference (optional)						

WMT, WMA  
 8.030 s Aug 11 2017 MITek Industries, Inc. Thu Jan 04 10:45:37 2018 Page 1  
 ID:eaRSnl5wxfSyCn8pN9I3zzybygv-byKRIVZh9WjxQU8zX4Lm73gJ7AgPQB7P9hH5zylzC  
 1-0-0 10-2-7 20-11-11 31-8-15 41-11-6 42-11-6  
 1-0-0 10-2-7 10-9-4 10-9-4 10-2-7 1-0-0

Scale = 1:71.4

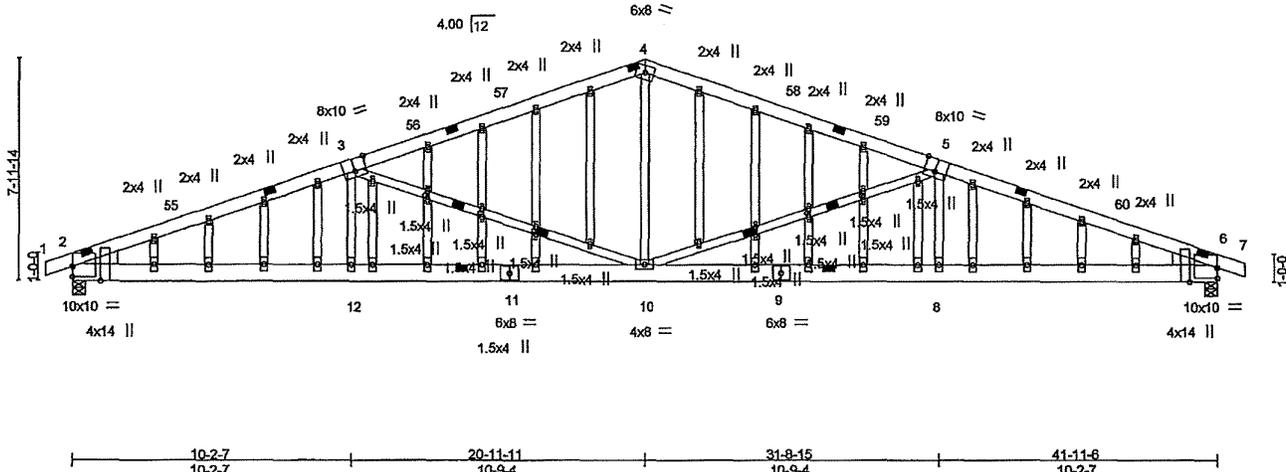


Plate Offsets (X,Y)	[2:0-6-3,Edge], [2:0-0-0,4-8], [3:0-5-0,Edge], [5:0-5-0,Edge], [6:Edge,0-4-8], [6:0-6-3,Edge], [15:0-1-11,0-0-12], [18:0-1-11,0-0-12], [21:0-1-11,0-0-12], [38:0-1-11,0-0-12], [41:0-1-11,0-0-12], [44:0-1-11,0-0-12]
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LOADING (psf)	SPACING	CSL	DEFL.	PLATES	GRIP
TCLL 35.0 (Roof Snow=35.0)	2-0-0	TC 0.80	in (loc) l/defl L/d	MT20	169/123
TCDL 10.0	Plate Grip DOL 1.15	BC 0.44	Vert(LL) -0.25 10-12 >999 360		
BCLL 0.0	Lumber DOL 1.15	WB 0.79	Vert(TL) -0.48 10-12 >999 240		
BCDL 10.0	Rep Stress Incr YES	Matrix-SH	Horz(TL) 0.13 6 n/a n/a		
	Code IRC2009/TPI2007		Wind(LL) 0.14 10-12 >999 240		
				Weight: 328 lb	FT = 3%

**LUMBER-**  
 TOP CHORD 2x6 SPF 2100F 1.8E \*Except\*  
 1-3,5-7: 2x6 SPF 1650F 1.5E  
 BOT CHORD 2x8 SP 2400F 2.0E  
 WEBS 2x4 SPF No.2  
 OTHERS 2x4 SPF No.2  
 WEDGE  
 Left: 2x6 SPF-S No.2, Right: 2x6 SPF-S No.2

**BRACING-**  
 TOP CHORD  
 Installation 1 Stabilizer(s) at 8-4-8 (max) oc.  
 Permanent Sheathed or 3-4-9 oc purlins.  
 BOT CHORD  
 Installation 1 Stabilizer(s) at 15-0-0 (max) oc.  
 Permanent Rigid ceiling directly applied or 10-0-0 oc bracing.  
 WEBS 2 row(s) of 1 Stabilizer(s) at 1/3 pts.  
 5-10, 3-10

**REACTIONS.** (lb/size) 2=2393/0-5-8, 6=2393/0-5-8  
 Max Uplift 2=809(LC 4), 6=809(LC 4)

**FORCES.** (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
 TOP CHORD 2-3=-5174/1484, 3-4=-3611/1182, 4-5=-3611/1182, 5-6=-5174/1484  
 BOT CHORD 2-12=-1263/4687, 10-12=-1266/4683, 8-10=-1266/4683, 6-8=-1263/4687  
 WEBS 4-10=-219/1287, 5-10=-1776/498, 3-10=-1776/498

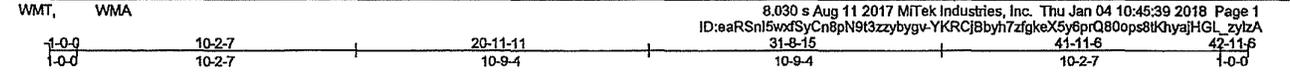
- NOTES-**
- Wind: ASCE 7-05; 110mph; TCDL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; enclosed; C-C Exterior(2) -1-0-0 to 4-0-0, Interior(1) 4-0-0 to 15-11-11, Exterior(2) 15-11-11 to 20-11-11, Interior(1) 25-11-11 to 37-11-6; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
  - Truss designed for wind loads in the plane of the truss only. For studs exposed to wind (normal to the face), see Standard Industry Gable End Details as applicable, or consult qualified building designer as per ANSI/TPI 1.
  - TCLL: ASCE 7-05; Pf=35.0 psf (flat roof snow); Category II; Exp C; Partially Exp.; Ct=1.1
  - Unbalanced snow loads have been considered for this design.
  - This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 35.0 psf on overhangs non-concurrent with other live loads.
  - All plates are 3x6 MT20 unless otherwise indicated.
  - Gable studs spaced at 2-0-0 oc.
  - \* This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-6-0 tall by 1-0-0 wide will fit between the bottom chord and any other members.
  - Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 809 lb uplift at Joint 2 and 809 lb uplift at joint 6.
  - For Stabilizer bracing, see MITek Stabilizer Installation Guide. Cross brace at: Webs: 20-0-0; TC: Inst. 20-0-0; BC: ; Inst. 20-0-0.
  - Where diaphragm blocking is required at pitch breaks, Stabilizers may be replaced with wood blocking.
  - Warning: Additional permanent and stability bracing for truss system (not part of this component design) is always required.



*Xuehang Liu*  
 January 4, 2018

<p><b>WARNING - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MIT-743 rev. 10/03/2015 BEFORE USE.</b>          Design valid for use only with MITek® connectors. This design is based only upon parameters shown, and is for an individual building component, not a truss system. Before use, the building designer must verify the applicability of design parameters and properly incorporate this design into the overall building design. Bracing indicated is to prevent buckling of individual truss web and/or chord members only. Additional temporary and permanent bracing is always required for stability and to prevent collapse with possible personal injury and property damage. For general guidance regarding the fabrication, storage, delivery, erection and bracing of trusses and truss systems, see ANSIP/TPH Quality Criteria, DSB-89 and BCSI Building Component Safety Information available from Truss Plate Institute, 218 N. Lee Street, Suite 312, Alexandria, VA 22314.</p>	 16023 Swingley Ridge Rd Chestertown, MD 20759
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Job	Truss	Truss Type	Qty	Ply	Attic Truss	132060302
KC3736	T-2	COMMON	7	1		



Scale = 1:71.4

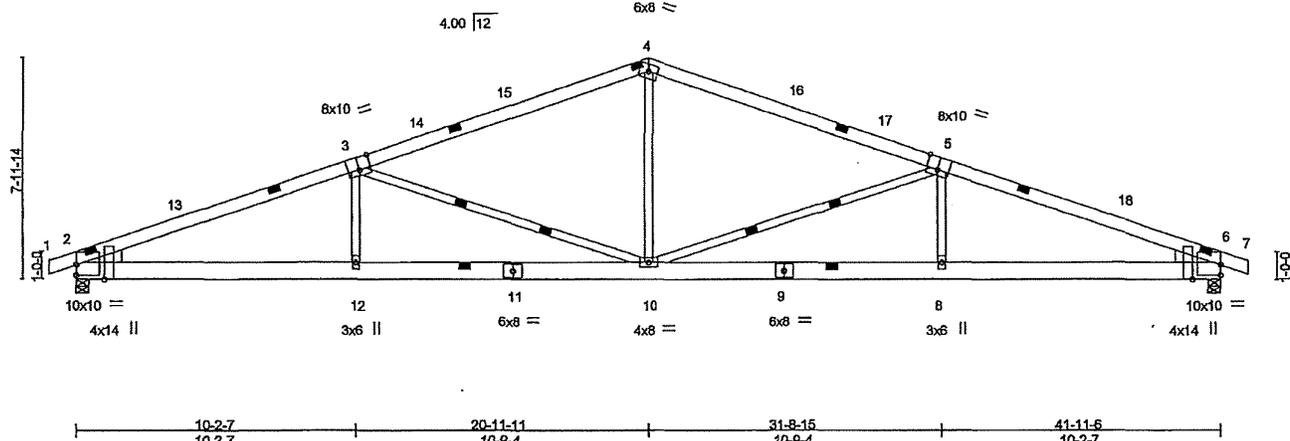


Plate Offsets (X,Y)-		[2:0-6-3,Edge]	[2:0-0-0-4-8]	[3:0-5-0,Edge]	[5:0-5-0,Edge]	[6:Edge,0-4-8]	[6:0-6-3,Edge]		
LOADING (psf)	SPACING-	2-0-0	CSI.	DEFL.	In (loc)	V/defl	L/d	PLATES	GRIP
TCLL 35.0 (Roof Snow=35.0)	Plate Grip DOL	1.15	TC 0.80	Vert(LL)	-0.25 10-12	>999	360	MT20	169/123
TCDL 10.0	Lumber DOL	1.15	BC 0.44	Vert(TL)	-0.48 10-12	>999	240		
BCLL 0.0 *	Rep Stress Incr	YES	WB 0.79	Horz(TL)	0.13 6	n/a	n/a		
BCDL 10.0	Code IRC2009/TPI2007		Matrx-SH	Wind(LL)	0.14 10-12	>999	240	Weight: 258 lb	FT = 3%

<b>LUMBER-</b>	<b>BRACING-</b>
TOP CHORD 2x6 SPF 2100F 1.8E *Except* 1-3,5-7; 2x6 SPF 1650F 1.5E	TOP CHORD Installation 1 Stabilizer(s) at 9-4-8 (max) oc. Permanent Sheathed or 3-4-9 oc purlins.
BOT CHORD 2x8 SP 2400F 2.0E	BOT CHORD Installation 1 Stabilizer(s) at 15-0-0 (max) oc. Permanent Rigid ceiling directly applied or 10-0-0 oc bracing.
WEBS 2x4 SPF No.2	WEBS 2 row(s) of 1 Stabilizer(s) at 1/3 pts. 5-10, 3-10
WEBSITE Left: 2x6 SPF-S No.2, Right: 2x6 SPF-S No.2	

**REACTIONS.** (lb/size) 2=2393/0-5-8, 6=2393/0-5-8  
Max Uplift 2=-809(LC 4), 6=-809(LC 4)

**FORCES.** (lb) - Max. Comp./Max. Ten. - All forces 250 (lb) or less except when shown.  
TOP CHORD 2-3=-5174/1484, 3-4=-3611/1182, 4-5=-3611/1182, 5-6=-5174/1484  
BOT CHORD 2-12=-1263/4687, 10-12=-1266/4683, 8-10=-1266/4683, 6-8=-1263/4687  
WEBS 4-10=-219/1287, 5-10=-1776/498, 3-10=-1776/498

- NOTES-**
- 1) Wind: ASCE 7-05; 110mph; TCCL=6.0psf; BCDL=6.0psf; h=25ft; Cat. II; Exp C; enclosed; C-C Exterior(2) -1-0-0 to 4-0-0, Interior(1) 4-0-0 to 15-11-11, Exterior(2) 15-11-11 to 20-11-11, Interior(1) 25-11-11 to 37-11-6; cantilever left and right exposed; end vertical left and right exposed; Lumber DOL=1.33 plate grip DOL=1.33
  - 2) TCLL: ASCE 7-05; Pf=35.0 psf (flat roof snow); Category II; Exp C; Partially Exp.; Ct=1.1
  - 3) Unbalanced snow loads have been considered for this design.
  - 4) This truss has been designed for greater of min roof live load of 16.0 psf or 1.00 times flat roof load of 35.0 psf on overhangs non-concurrent with other live loads.
  - 5) \* This truss has been designed for a live load of 20.0psf on the bottom chord in all areas where a rectangle 3-6-0 tall by 1-0-0 wide will fit between the bottom chord and any other members.
  - 6) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 809 lb uplift at joint 2 and 809 lb uplift at joint 6.
  - 7) For Stabilizer bracing, see MITek Stabilizer Installation Guide. Cross brace at: Webs: 20-0-0; TC: Inst. 20-0-0; BC: ; Inst. 20-0-0.
  - 8) Where diaphragm blocking is required at pitch breaks, Stabilizers may be replaced with wood blocking.
  - 9) Warning: Additional permanent and stability bracing for truss system (not part of this component design) is always required.



Xuegang Liu  
January 4, 2018

<p><b>WARNING - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MIT-7473 rev. 10/03/2015 BEFORE USE.</b> Design valid for use only with MITek® connectors. This design is based only upon parameters shown, and is for an individual building component, not a truss system. Before use, the building designer must verify the applicability of design parameters and properly incorporate this design into the overall building design. Bracing indicated is to prevent buckling of individual truss web and/or chord members only. Additional temporary and permanent bracing is always required for stability and to prevent collapse with possible personal injury and property damage. For general guidance regarding the fabrication, storage, delivery, erection and bracing of trusses and truss systems, see ANSITP11 Quality Criteria, DSB-89 and BCSI Building Component Safety Information; available from Truss Plate Institute, 216 N. Lee Street, Suite 312, Alexandria, VA 22314.</p>	<p>16023 Swingley Ridge Rd Chesterfield, MO 63017</p>
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Job	Truss	Truss Type	Qty	Ply	Attic Truss
KC3736	GRD-1	COMMON	2	2	

I32060299

WMT, WMA

8.030 s Aug 11 2017 MiTek Industries, Inc. Thu Jan 04 10:45:35 2018 Page 2  
 ID:eaRSnl5wxfSyCn8pN9I3zzybygv-fZChuqYRduTDB7LIs62ha\_TnCUSxUzMf5J2CCzytzE

LOAD CASE(S) Standard

Uniform Loads (plf)

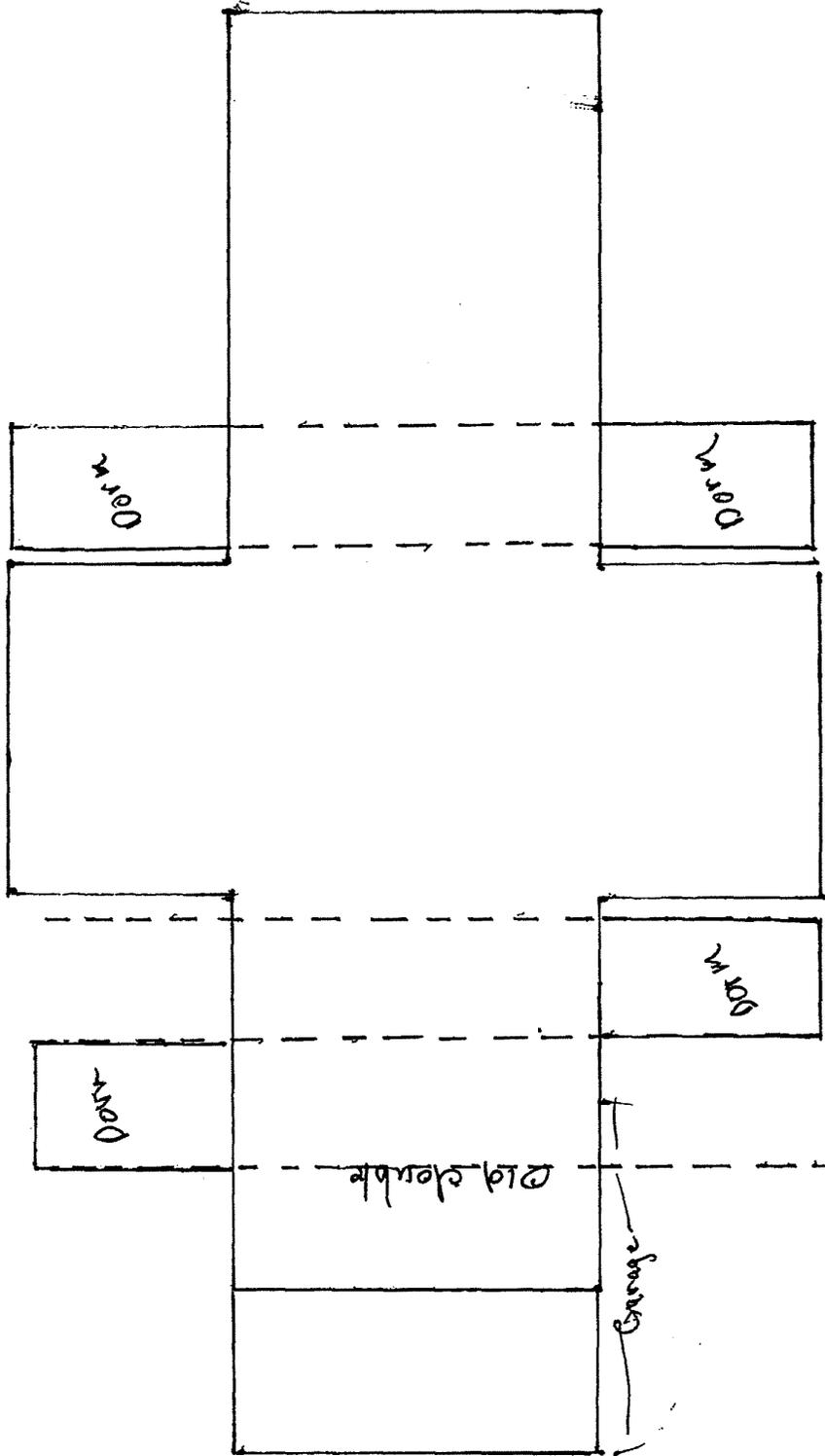
Vert: 1-6=-56, 6-11=-56, 2-10=-461(F=-440)

**WARNING - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MII-7473 rev. 10/03/2015 BEFORE USE.**

Design valid for use only with MITEK® connectors. This design is based only upon parameters shown, and is for an individual building component, not a truss system. Before use, the building designer must verify the applicability of design parameters and properly incorporate this design into the overall building design. Bracing Indicated is to prevent buckling of individual truss web and/or chord members only. Additional temporary and permanent bracing is always required for stability and to prevent collapse with possible personal injury and property damage. For general guidance regarding the fabrication, storage, delivery, erection and bracing of trusses and truss systems, see ANSUTP1 Quality Criteria, DSB-89 and BCSI Building Component Safety Information available from Truss Plate Institute, 218 N. Lee Street, Suite 312, Alexandria, VA 22314.



16023 Swingley Ridge Rd  
 Chesterfield, MO 63017

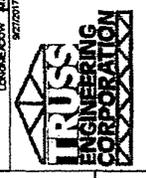


None tripled

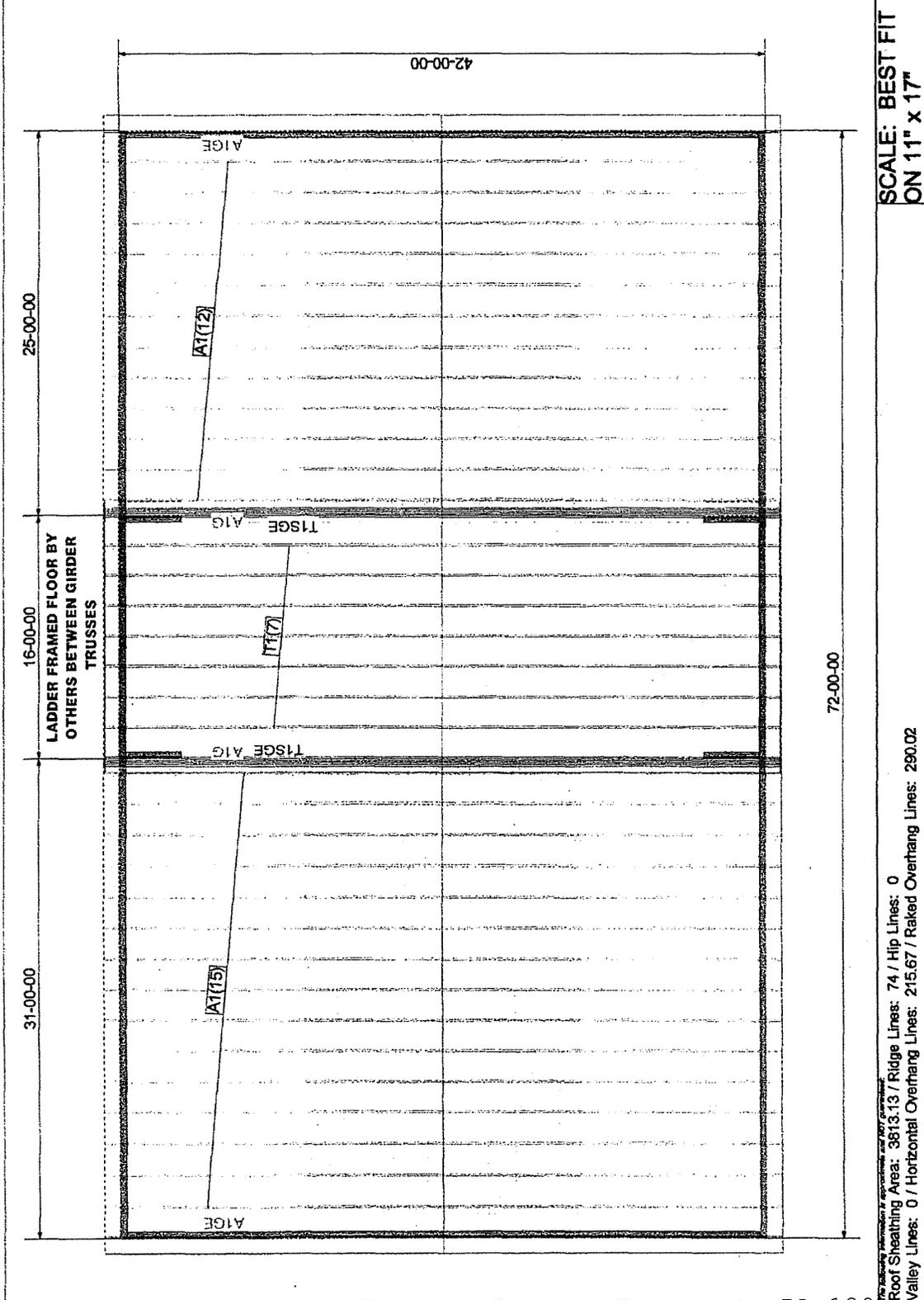
THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES.

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PROJECT: ROOF SHEATHING  
 DRAWN BY: JOHN GOODRICH  
 CHECKED BY: ALVIN REBOLLO  
 DATE: 08/11/2011  
 SCALE: AS SHOWN

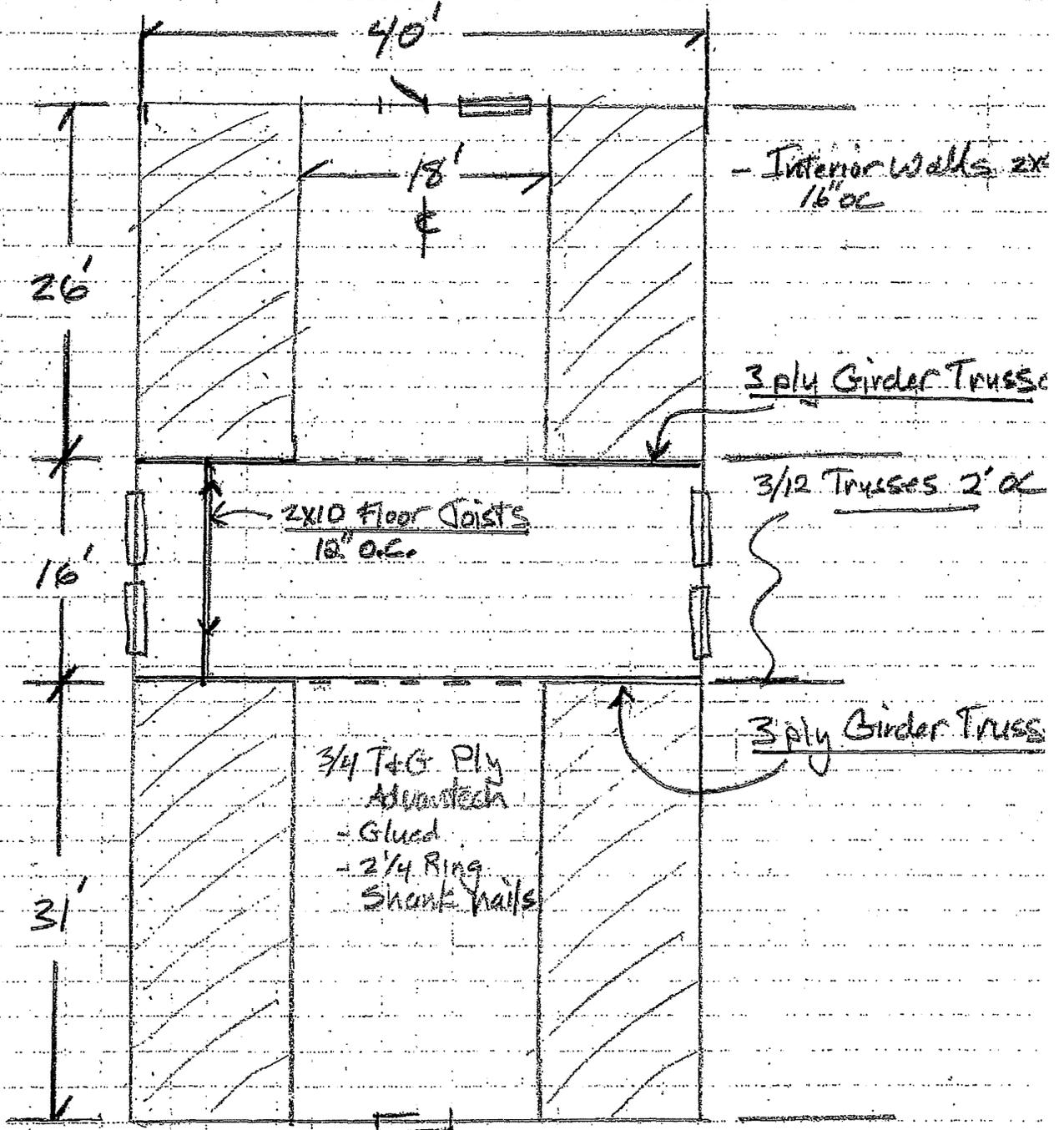


SCALE: BEST FIT  
 ON 11" x 17"

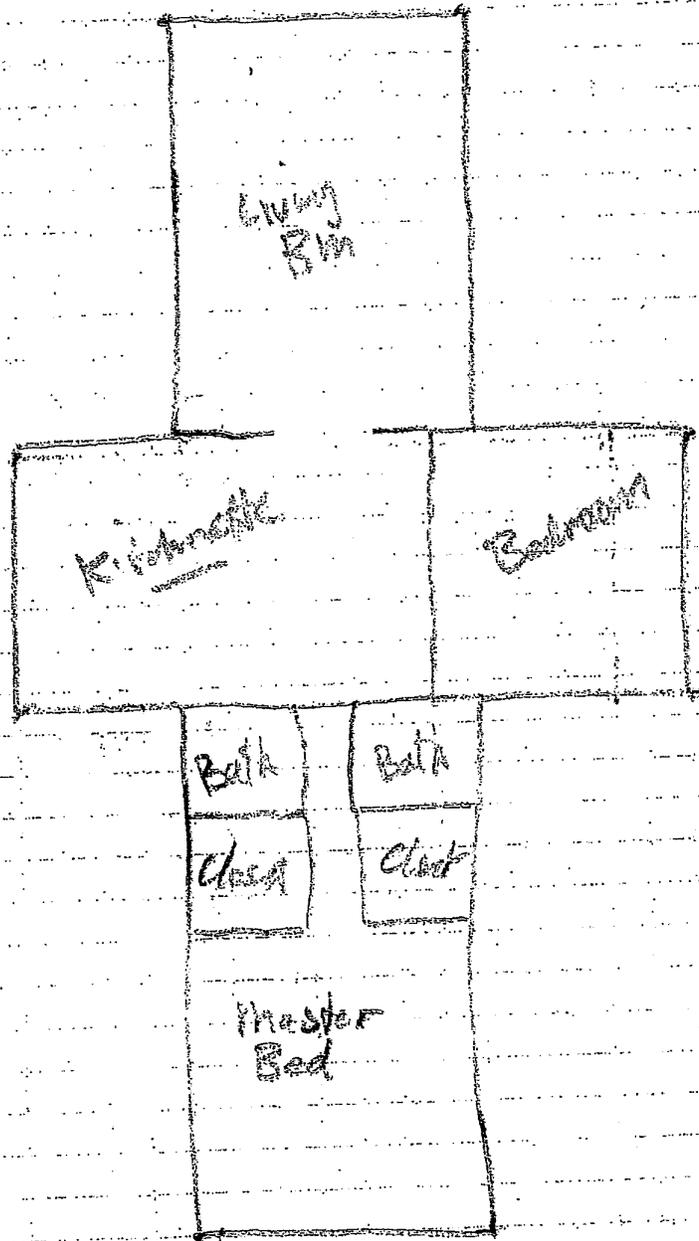
Roof Sheathing Area: 3613.13 / Ridge Lines: 74 / Hip Lines: 0  
 Valley Lines: 0 / Horizontal Overhang Lines: 215.67 / Raked Overhang Lines: 290.02



Terri + Alan King  
 49 Memory Lane  
 Longmeadow, MA 01106



# Room Layout



COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

2019-J-560

BANK OF NEW YORK MELLON

vs.

ALTON KING, JR. and another.<sup>1</sup>

MEMORANDUM AND ORDER

After judgment on the merits was entered against the defendant Alton King, Jr., in this post-foreclosure summary process action in the Housing Court, he filed a notice of appeal and a motion to waive the appeal bond. By order dated October 31, 2019, the Housing Court determined that the defendant was indigent and had non-frivolous defenses or counterclaims and thus waived the bond "other than monthly use and occupancy payments," in the amount of \$4,000 per month, to be paid into the court. The defendant filed a notice of appeal from that order, a hearing was scheduled, and in preparation for the hearing, both parties filed memoranda of law. The defendant argued that an order for such payments was impermissible under G.L. c. 239, §§ 5 and 6, or in the alternative that the amount ordered should be reduced. The plaintiff argued that the order was permissible and that no reduction of the amount is

<sup>1</sup> Terri A. Mayes-King.

warranted. At the hearing on December 9, 2019, the parties acknowledged that this issue is a recurring one on which to date there is no published decision directly on point. In Novastar Mortgage, Inc. vs. Saffran, 83 Mass. App. Ct. 1119 (2013) (memorandum and order under Rule 1:28), a panel upheld an order for periodic payments in circumstances much like those here. In Bank of New York Mellon vs. Dundon, No. 2019-J-257 (July 17, 2019), a single justice of this court (Rubin. J.) reached the opposite conclusion in a memorandum and order on a motion for reconsideration or clarification. Since that time, other single justices of this court have followed the reasoning of Dundon. See, e.g., Scaduto v. Malonson, No. 2019-J-386 (Aug. 28, 2019) (Vuono, J.); 21st Mortgage Corp. v. Lapham, No. 2019-J-394 (Aug. 28, 2019) (Vuono, J.); Santander Bank, N.A. v. Adjartey, No. 2019-J-448 (Oct. 17, 2019) (Lemire, J.). I, similarly, find it appropriate to follow the reasoning of Dundon, and I therefore vacate so much of the Housing Court's October 31, 2019, order as required monthly use and occupancy payments. A copy of the single justice's order in Dundon is attached as an appendix to this decision.

In Dundon, Scaduto, and Lapham, the single justice's order has been appealed to a panel (Dundon having been docketed as 2019-P-1116, Scaduto as 2019-P-1382, and Lapham as 2019-P-1422). In both Dundon and Scaduto, however, the plaintiff-appellants'

briefs assert threshold arguments that, if accepted, may result in the panel not reaching the question whether periodic payments may be ordered in circumstances like those present here.

At the hearing before me in this case, the parties agreed that an authoritative resolution of the question is desirable. Accordingly, pursuant to Appeals Court Rule 2:01 and Mass. R. Civ. P. 64(a), I hereby report the correctness of my decision to a panel of this court. Pursuant to Mass. R. App. P. 5, my report is the equivalent of a notice of appeal, and the plaintiff, Bank of New York Mellon, is the appellant. It would be desirable for the briefing in this appeal to be complete by February 1, 2020, to make it more likely that the appeal can be argued in the spring of 2020. To that end, the record in this appeal shall be assembled forthwith and the appeal docketed without payment of the usual fee, and the parties should not anticipate enlargements of time to file their briefs.

Once the defendant's appeal on the merits from the summary process judgment is docketed in this court, either party or the parties jointly may move to consolidate the appeals or to have them assigned to the same panel for hearing. However, because the appeals may proceed at different speeds and because each party is the appellant in one appeal and the appellee in another, I make no forecast regarding how any such motion will be resolved. Finally, as discussed at the hearing before me, I

encourage the parties to consider what other persons, organizations, or other entities may have a sufficient interest in the question presented here to submit an amicus brief to the court once the case is docketed on the panel docket.

So ordered.

By the Court (Sacks, J.),

Assistant Clerk

Entered: December 10, 2019.

**APPENDIX**

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-J-257

The Bank of New York Mellon

vs.

Deirdre Dundon.

MEMORANDUM AND ORDER

The plaintiff The Bank of New York Mellon moves for reconsideration and/or clarification of my June 28, 2019 order vacating a Housing Court order that required the defendant to pay an appeal bond of \$8,400 and monthly use and occupancy payments of \$1,050. The plaintiff's motion is granted to the extent it seeks clarification of my order. My order vacated the entire Housing Court order: The defendant is required to pay neither the appeal bond nor the periodic use and occupancy payments.

To the extent the plaintiff's motion seeks reconsideration, it is denied. The plaintiff argues that, under G. L. c. 239, § 5 (e), even when the appeal bond is waived, the Housing Court is required to order the defendant to pay "monthly payments pending appeal." This misreads the statute. § 5 (e) states, "The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or

any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits." The statute does not require the payment of "monthly payments pending appeal," but only "rent which shall become due," and it forbids the court from ordering any other payments. Here, the parties have no tenancy relationship and the defendant does not owe rent. G. L. c. 239, § 5 (e) therefore forbade the Housing Court from ordering periodic payments pending appeal.

This interpretation is bolstered by G. L. c. 239, § 6, which provides: "If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff." This, not § 5 (e), is the statute that sometimes requires the Housing Court to order periodic payments pending appeal in cases like this one, where the defendant is a foreclosed-on entity. But those payments are a "condition of the bond." Because there is no bond in this case, § 6 is inapplicable.

To the extent the plaintiff's motion seeks clarification, it is granted as described above. In all other respects it is denied.

So ordered.

By the Court (Rubin, J.),

Assistant Clerk

Entered: July 17, 2019