



Mass Alliance Against Predatory Lending

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Homeowners very excited to provide Massachusetts Supreme Judicial Court with irrefutable evidence of their equal and due process rights to access our courts, even if indigent.

Boston, MA February 27, 2024- “We are very excited to provide to our top court in Massachusetts the legal history irrefutably showing the Court that homeowners fighting a foreclosure are guaranteed their constitutional right to equal access to our courts, that they cannot be categorized for more limited rights of traditional tenants in an eviction case, and that the SJC’s own repeated history that your financial information and your due process rights, when you are indigent, are just between you and the Court,” stated Karen Merritt of Rehoboth and Jay Lively of Falmouth in their release this day.

“This is critically important: the very mortgage holders who refuse you loan modifications and refuse partial payments thereby put you in a position so they can bar you from ever being able to pay; then in court use their own barrier to blame you as ‘wanting a free house’,” Liz Bewsee, Co-chair of the Massachusetts Alliance Against Predatory Lending and staff at Arise for Social Justice Springfield, explained.

“And then a Court giving them, on top of that, your financial information, when you have a right to a confidential conversation with the courts about indigency compounds the travesty of the blaming the victim in these situations. On this day in 2024, I as an Affiant Sworn-Indigent, K. Merritt am a canary in a coal mine used to detect pain and suffering and other toxic constitutional rights violations in the Southeast Housing Court. Consider me as returned gasping for air at the door of the Supreme Judicial Court serving as an indication that it's unfit for humans.” Karen Merritt, Amicus and miner for justice.

In 1974, as part of the promulgation of Mass Rules of Civil Procedure, the Massachusetts Legislature passed a comprehensive and mandatory law that everyone has to have equal access to our courts, regardless of the ability to pay a purely court-imposed cost. In 2019, in the very comprehensive decision by the Massachusetts Supreme Judicial Court known as *Adjarthey v. Central Housing Court*, 481 Mass. 830 (2019), the SJC affirmed that equal access constitutional commitment for all litigants in all types of court cases in the Massachusetts court system.

However, since that time, homeowners fighting for their homes after a nonjudicial foreclosure auction in eviction cases have been uniquely singled out to not get that law’s protection for access to the courts, especially for appeals.

Finally, last May 18th of 2023, a homeowner, Elizabeth D'Andrea, got a single justice from the expedited side of our state Appeals Court to recognize that she was being denied that equal access protection. Thankfully, the Honorable Judge Rubin reported her denial of equal access to our courts for review by a Full Appeal Panel. It was then grabbed, on its own initiative, by our top court, the Massachusetts Supreme Judicial Court.

What has not yet been reviewed by the SJC is that homeowners cannot be singled out to be denied access to our higher courts. The SJC has not reviewed, nor agreed to enforce the confidential nature of a decision as to a party's indigency, financial information, and the procedures to guarantee access to the courts.

Instead, thus far, the SJC has not reviewed the D'Andrea case as the constitutional equal protection suit, nor required the only two interested parties to the question of ensuring affordable access to the courts are heard by the SJC. (Frechette v. D'Andrea, SJC-13497)

Instead, so far, the SJC has appeared to be unaware that nowhere in Massachusetts caselaw, for almost 200 years, has someone without a lease or rental agreement been treated as a tenant or a "holdover tenant". Therefore, a homeowner fighting over the title for their home, who clearly does not have a rental agreement with anyone, cannot be treated as a tenant. That has been affirmed by, arguably, the most revered legal research outfit in the United States, Lexis Nexis, thanks to Lively's efforts and he has reported those details in his Friend of the Court Brief to the SJC in the D'Andrea case just today. "I have spent 4 years with my Lexis Tutor researching real property law and am grateful for the opportunity to help clarify a misinterpretation, and excited that many other homeowners, marginalized for more than a decade, may finally share justice."

Friend of the court brief filer, homeowner Karen Merritt, has just mirrored back in her brief to the SJC its own 50 year history of guaranteeing a remedy for unaffordable court-ordered costs to ensure court access, even for indigent parties; and its repeated the guarantee that those communications will be confidential between the party and the court and the repeated necessity that the SJC enforce that confidentiality and mandator remedies, because lower court judges have periodically created patterns of violating that constitutional guarantee.

"No, with foreclosures increasing exponentially again is no time for the SJC to fail to continue its and our Constitution's guarantee of equal access to our courts. With a 90% increase in foreclosures in 2023 over 2022 in Massachusetts and our increased research and thus evidence of systematic illegalities by the wealthy mortgage industry is no time for our equal rights to be curtailed, or as the SJC itself has said it is 'critical' that courts act 'consistently' 'to ensure the doors to our courts are not closed to the indigent.' " as Liz Bewsee provided for context.

"If SJC agrees with our findings, it appears that a Court must vacate the Frechette judgment on this basis of long settled law it established 170 yrs ago. Our cases deal with fundamental rights of life, liberty and property. The decisions of our highest courts either preserve or curtail those rights," said Lively.

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