

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Cummins Realty Trust v. O'Neill

No. SJC-13452, Supreme Judicial Court of Massachusetts (October 13, 2023)

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the denial of Frank O'Neill's petition under G. L. c. 211, § 3, challenging a Housing Court order requiring monthly use and occupancy payments during his appeal in a summary process action. The court held that O'Neill had an adequate avenue for review under G. L. c. 239, § 5 (f), and was not entitled to an additional layer of review. The court also noted that any challenge to the denial of an extension was moot.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
JURISDICTION	Massachusetts
DECIDED	October 13, 2023
DOCKET	SJC-13452
DISPOSITION	affirmed
PROCEDURAL POSTURE	O'Neill petitioned the county court under G. L. c. 211, § 3, seeking relief from a Housing Court order requiring monthly use and occupancy payments during his appeal from a summary process judgment. A single justice denied relief, and O'Neill appealed to the Supreme Judicial Court.
STANDARD OF REVIEW	Relief under G. L. c. 211, § 3, is properly denied when the petitioner has or had an adequate and effective alternative avenue for relief. The Supreme Judicial Court reviewed whether the single justice erred or abused her discretion in denying relief.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Frank O'Neill v. Cummins Realty Trust

TOPICS

- appellate procedure
- writ of certiorari
- interlocutory appeal
- landlord tenant
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the county court single justice properly denied extraordinary relief under G. L. c. 211, § 3, where O'Neill had already sought review of the use and occupancy order under G. L. c. 239, § 5 (f).
2. Whether O'Neill was entitled to an additional layer of appellate review of the use and occupancy order in the Supreme Judicial Court.
3. Whether the challenge to the denial of a ten-day extension was moot.

HOLDINGS

1. A single justice properly denies relief under G. L. c. 211, § 3, when the petitioner has or had an adequate and effective alternative avenue to seek the requested relief.
2. A petitioner is not entitled as of right to an additional layer of review in the Supreme Judicial Court of a use and occupancy order already reviewed by a single justice of the Appeals Court.
3. The challenge to denial of the ten-day extension was moot because O'Neill did not contend that the requested extension would have enabled him to comply with the payment order.

KEY QUOTATIONS

"A single justice properly denies relief under G. L. c. 211, § 3, "where the petitioning party has or had adequate and effective avenues other than G. L. c. 211, § 3, by which to seek and obtain the requested relief""
(at 2)

"He was "not entitled as of right to an additional layer of review of the . . . use and occupancy order[] in this court."" (at 2)

FACTUAL BACKGROUND

O'Neill appealed from a Housing Court summary process judgment entered in favor of Cummins Realty Trust. The Housing Court waived his appeal bond but ordered him to pay \$1,200 per month in use and occupancy payments while the appeal was pending. After O'Neill failed to make the payments, the Housing Court ordered him to tender three months of arrears and warned that noncompliance would result in dismissal of his substantive appeal. O'Neill sought a reduction in the payments and an extension of the deadline, but the county court single justice denied his requests.

PROCEDURAL HISTORY

After a Housing Court judge entered final judgment for Cummins Realty Trust in a summary process action, O'Neill appealed, obtained a waiver of the appeal bond, and was ordered to make monthly use and occupancy payments of \$1,200. A single justice of the Appeals Court affirmed the use and occupancy order. The Housing Court later ordered O'Neill to tender outstanding payments and warned that noncompliance would result in dismissal of his substantive appeal. O'Neill sought county-court relief under G. L. c. 211, § 3, including a

reduction of the payments and an extension of the payment deadline; the single justice denied relief, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Marnerakis v. Phillips, Silver, Talman, Aframe & Sinrich, P.C., 445 Mass. 1027, 1027 (2006)
- Bigelow v. Massachusetts Courts Promulgator of Official Forms, 484 Mass. 1056, 1057 (2020)

OPINION

PER CURIAM.

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557- 1030; SJCReporter@sjc.state.ma.us SJC-13452 CUMMINS REALTY TRUST vs. FRANK O'NEILL.

October 13, 2023. Summary Process, Appeal. Practice, Civil, Summary process. Supreme Judicial Court, Superintendence of inferior courts. The petitioner, Frank O'Neill, filed a petition in the county court, pursuant to G. L. c. 211, § 3, seeking relief from an order of the Housing Court requiring him to make use and occupancy payments. A single justice of this court denied the petition, and O'Neill appealed.

We affirm. Background. On December 21, 2022, O'Neill filed a timely notice of appeal from the entry of final judgment in favor of Cummins Realty Trust in a summary process action. A judge in the Housing Court granted O'Neill's motion to waive the appeal bond and ordered him to pay monthly use and occupancy payments in the amount of \$1,200 during the pendency of his appeal.

O'Neill failed to make any such payments. O'Neill subsequently sought interlocutory review of the use and occupancy order before a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5 (f). The single justice affirmed. Thereafter, the Housing Court ordered O'Neill to tender three months of outstanding use and occupancy payments by May 16, 2023, warning that failure to comply would result in the dismissal of his substantive appeal from the judgment in the summary process action.

On the same date, O'Neill filed the instant petition in the county court, seeking a reduction in the monthly use and occupancy payments from \$1,200 to one hundred dollars. That petition was denied. 2 On May 16, 2023, the deadline for tendering the outstanding use and occupancy payments, O'Neill filed a motion in the county court requesting a ten-day extension of the deadline

either to "explore" appealing from the use and occupancy order in the Federal District Court or to finish moving out of the residence.

The single justice denied the motion, and this appeal followed. Discussion. A single justice properly denies relief under G. L. c. 211, § 3, "where the petitioning party has or had adequate and effective avenues other than G. L. c. 211, § 3, by which to seek and obtain the requested relief" (citation omitted). *Marnerakis v. Phillips, Silver, Talman, Aframe & Sinrich, P.C.*, 445 Mass. 1027, 1027 (2006).

Here, the petitioner sought review of the use and occupancy order from a single justice of the Appeals Court, pursuant to G. L. c. 239, § 5 (f). He was "not entitled as of right to an additional layer of review of the... use and occupancy order[] in this court." *Bigelow v. Massachusetts Courts Promulgator of Official Forms*, 484 Mass. 1056, 1057 (2020).

Accordingly, the single justice did not err or abuse her discretion in denying relief under G. L. c. 211, § 3.1 Judgment affirmed. The case was submitted on briefs. Frank O'Neill, pro se. Robert D. Russo & Patrick J. Donnelly for the respondent. 1 To the extent that O'Neill challenges the denial of his motion for a ten-day extension of the May 16, 2023, deadline, which he does not contend would have enabled him to comply with the order, the issue is moot.