

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH OF MASSACHUSETTS

NO. SJC 2016 - 12123

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| <p>RECEIVED SUPREME JUDICIAL COURT</p> <p>OCT 11 2018</p> <p>FOR THE COMMONWEALTH FRANCIS V. KENNEALLY, CLERK</p> |
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TERRY ANN SELDON CALHOUN
Defendant/Appellant

v.

BOYD/SMITH, INC.
Plaintiff/Appellee

**BRIEF (MEMORANDUM) OF THE APPELLEE and
REQUEST TO APPEAR AND PRESENT ORAL ARGUMENT**

Daniel A. Bancroft (BBO #028240)
 BRODERICK BANCROFT
 313 Washington Street, Suite 207
 Newton, MA 02458
 (617) 641-9906
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Dated: October 11, 2018

INTRODUCTION

Appellee files this Brief in advance of the anticipated oral argument to be scheduled by the Court; however, because of the specific history of this case, Appellee is unable to respond to or anticipate the Appellant's arguments. Appellant has failed and refused to file a brief in compliance with the Rules of Appellate Procedure. Instead, Appellant filed (but did not regularly serve) various narrative documents which appear to relate to relevant and irrelevant matters she raised or could have attempted to raise at trial. As a direct consequence of the Appellant's failure and refusal to file any meaningful or understandable documents, Appellee is unaware of any issues that can be properly presented to this Court in connection with this Appeal.

**CURRENT PROCEDURAL
HISTORY**

Between August 8, 2016 and May 26, 2017 Appellant filed fifteen (15) letters and miscellaneous documents, including photographs, which do not appear to be relevant to any issue before this Court. Some, but not all, of these documents and letters were served upon Appellee's counsel. On September 6, 2017, in response to a Notice Preceding Dismissal, Appellant filed a Motion for extension, which was allowed to October 6, 2017. On December 26, 2017, in response to a second Notice

Preceding Dismissal Appellant filed, but did not serve, a Motion to "treat previously filed pleadings, documents, photos, evidence as one non-conforming brief and to enlarge time for serving." No action was taken by this Court on that Motion.¹

Most recently, after Appellee filed three (3) Motions (to Postpone Oral Argument, to File Opposition to Appellant's December 26, 2017 Motion, and to File Brief), Appellant apparently filed, but again did not serve a Response to said Motions (on September 14, 2018), and a Response to Notice of Oral Argument.²

**PRIOR PROCEDURAL
HISTORY**

Appellee adopts and incorporates herein by reference the arguments and history set forth in Appellee's Opposition to Appellant's Motion to Stay Execution, filed June 14, 2016, attached and made a part hereof (Exhibit 1). That Opposition includes a Procedural History up to the date of filing. Subsequently, on June 16, 2016 this Court denied Appellant's request for stay, and a levy took place as scheduled on June 17, 2016.

¹ Not having received a copy of Appellant's Motion, Appellee assumed, in error, that the appeal had been administratively dismissed.

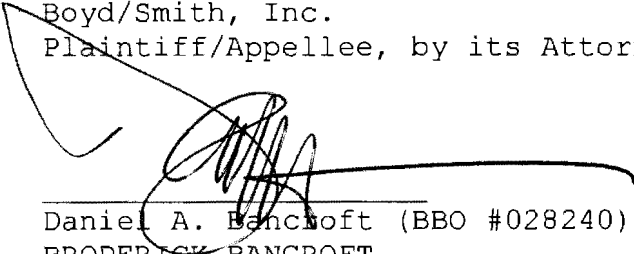
² "A *pro se* party is bound by the same principles of procedural and substantive law as litigants with legal counsel and '[is] held to the same standards as practicing members of the bar.'" *Reznik v. Friswell*, 2003 Mass.App.Div. 42, 2003 WL 1563981 (Mass.App.Div.), quoting *Mains v. Commonwealth*, 433 Mass. 30, 36 (2000).

CONCLUSION

Appellee specifically requests and reserves the right to appear and argue at the Oral Argument to be scheduled by this Court.

October 11, 2018

Respectfully Submitted,
Boyd/Smith, Inc.
Plaintiff/Appellee, by its Attorney



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CERTIFICATE OF SERVICE

I hereby certify that I filed with the Court, by hand-delivery, one original of the above brief and mailed one copy to Terry Calhoun, appearing *pro se*, via U.S. Mail, postage pre-paid, to her address of record.

October 11, 2018



Daniel A. Bancroft

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH OF MASSACHUSETTS

NO. SJC 2016 - 12123

TERRY ANN SELDON CALHOUN
Defendant/Appellant

v.

BOYD/SMITH, INC.
Plaintiff/Appellee

OPPOSITION OF BOYD/SMITH, INC. TO MOTION TO STAY

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Dated: June 14, 2016

PROCEDURAL HISTORY

This matter comes before this Court following a jury-waived trial in the Boston Housing Court on March 31, 2016, resulting in a Finding, Ruling and Order for Judgment d. April 4, 2016 in favor of Boyd/Smith, Inc. ("Landlord"), awarding Landlord possession of the premises and a judgment in the amount of \$12,740.00. Judgment for Possession and Damages entered on April 6, 2016. Terry Calhoun ("Tenant") filed a Notice of Appeal on April 11, 2016, and filed a Motion to Set Appeal Bond on April 13, 2016. Tenant did not request waiver of the Bond based upon indigency.

Pursuant to G.L. c. 239, §5(c) and (e), the trial court judge held a hearing on Tenant 's Motion to Set Appeal Bond, and after a hearing on April 21, 2016, set bond at \$15,925.00 by (Corrected) Order d. April 25, 2016, with a continuing condition of the appeal to be periodic payments of \$3,185.00 beginning May 1, 2016 in satisfaction of ongoing use and occupancy. In her findings, the trial judge noted that Tenant admitted she is not indigent, and not entitled to waiver of the Bond.

On or about May 9, 2016, Tenant filed, pursuant to G.L. c. 239, §5(f), an appeal of the Appeal Bond Order to the single justice of the Appeals Court. After a hearing before the single justice (Hanlon, J.) on May 24, 2016, an

Order issued on May 25, 2016 affirming the lower court's Order.

Tenant then filed on June 1, 2016 a Petition pursuant to G.L. c. 211, § 3, which was denied on June 3, without hearing.

Thereafter, on or about June 7, 2016, Tenant appealed the single justice's denial to the full court.

Pursuant to G.L. c. 239, § 5(h), Tenant's Appeal was dismissed in the trial court on June 6, 2016, when she failed to comply with the requirements of the decision (pay the bond), and Execution issued June 7, 2016.

Notice of Intent to Levy was served upon Tenant by Plaintiff's constable on June 9, 2016, with the levy scheduled for Friday, June 17, 2016, between the hours of 9am and 3pm (see attached Notice of Intent to Levy).

On June 10, 2016, Tenant filed a Motion to Stay, presently pending before this Court.

ARGUMENT

G.L. c. 239, § 5 specifically provides for one level of review (the Appeals Court), after which, if the terms of the bond order are affirmed,

(h) ... the defendant shall comply with the requirements of the decision within five days after receiving

notice thereof. If the defendant fails to file with the clerk of the court rendering the judgment, the amount of the bond, deposit or periodic payment required by the decision of the reviewing court within 5 days from receipt of notice of the decision, the appeal from the judgment shall be dismissed.

In *Ford v. Braman* (1991) 30 Mass. App. Ct. Ct. 968, 970, the court examined G.L. c. 239, § 5(c) and held that the statute provides for one level of review only, in keeping with the goal of a speedy (summary) procedure. The jurisdiction of the single justice (of the Appeals Court) is limited to the single situation when (as in the instant case), the motion to waive appeal bond was made in the Housing Court. The court went on to state that "any questions concerning the propriety of the bond should be raised, if necessary, on an appeal from a judgment dismissing the underlying appeal. Once having had the avenue of review provided in G.L. c. 239, § 5, the defendants must either file the bond or suffer their underlying appeal to be dismissed." *Ford v. Braman*, 30 Mass. App. Ct., 970. The Court goes on to warn that "while they [defendants] may appeal to a panel from that dismissal, they take the risk that if their claim of error as to the bond is decided adversely to them, they will lose

their underlying appeal. Cf. *McMahon v. Glixman*, 379 Mass. 60, 64 (1979) (medical malpractice bond)."

This court considered similar facts in the case of *In the Matter of an Appeal Bond*, 428 Mass. 1022, (1999), stating:

"relief under GL c. 211, §3, may not be sought as a substitute for normal appellate review; that we exercise our supervisory power sparingly; and that we do so only in exceptional circumstances and where necessary to protect substantive rights in the absence of an alternative, effective remedy."

CONCLUSION

The single justice of the Appeals Court having denied the Tenant 's appeal pursuant to G.L. c. 239, § 5 (f-h), and the single justice of this court having properly denied the request for relief under G.L. c. 211, § 3, the Motion for Stay is not properly before this court, and should be denied.

Respectfully Submitted,
Boyd/Smith, Inc.
Plaintiff/Appellee,
By its Attorney:

Dated: June 14, 2016



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CERTIFICATE OF SERVICE

I hereby certify that I filed with the Court, by email transmittal, one original of the above brief. On June 14, 2016 I transmitted two copies to Terry Calhoun, appearing *pro se*, one copy via U.S. Mail, postage pre-paid, and caused a second copy to be hand-delivered to her residence.

June 14, 2016



Daniel A. Bancroft (BBO #028240)
Counsel for Plaintiff/Appellee

TABLE OF AUTHORITIES

CASES

Ford v. Braman (1991) 30 Mass. App. Ct. Ct. 968 4

McMahon v. Glixman, 379 Mass. 60, 64 (1979) 5

In the Matter of an Appeal Bond, 428 Mass. 1022 (1999) ... 5

STATUTES

G.L. c. 211, § 3 3, 5

G.L. c. 239, § 5 3, 4

G.L. c. 239, § 5 (c) 4

G.L. c. 239, § 5 (c), (e) 2

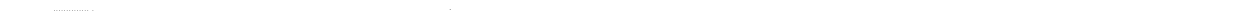
G.L. c. 239, § 5 (f) 2

G.L. c. 239, § 5 (h) 3

G.L. c. 239, § 5 (f) - (h) 5

ADDENDUM

Notice of Intent to Levy



Wills & Associates
Constables City of Boston
:p. (.) \$i/Jt ~~WJ~~\$"\$
Boston: MA. 02111
Tel# (J.-ft-fJ.89-d)t:J.2
Fax.: 617-fJ.89-1.MH

To: Terfy Calhoun
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l, Jf1b#7t1
IBQ\$6n.: MA 02111

Docket No. 15H4SP0tJ0707

EVICTON NOTICE

PIT: E: SUAID TO tl- l. E. EXE. C: tl() N. ISSUED
BY ORDER OF THE BOSTON HOUSING COURT

I will be there on Friday, June 7, 2013 between the hours of 9AM and 12PM to rent over all goods and chattels from the warehouse located at 1109 Montell Street for public storage warehouse, for the following:

D.051
6/9/2013

IF YOU HAVE ANY QUESTIONS PLEASE CALL


M. Anthony Lopes
617-989-1112

The moving company is located at 1109 Montell Street, Boston, MA 02111. Tel: 617-989-1112. If you have any questions, please call the Department of Housing and Community Development at 617-727-3211.

La comuna de Boston, MA, número de teléfono 617-989-1112. Si usted tiene alguna pregunta, puede llamar al Departamento de Seguridad Pública al teléfono 617-727-3211.