No. 24M

IN THE SUPREME COURT OF THE UNITED STATES

DEBRA M. BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION AND BANK OF AMERICA N.A.

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the First Circuit

EMERGENCY MOTION FOR STAY OF EXECUTION

To the Honorable Ketanji Brown Jackson

Associate Justice of the Supreme Court of the United States

DEBRA BROWN, ESQUIRE
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Petitioner
October 11, 2024

EMERGENCY MOTION FOR STAY OF EXECUTION

Pursuant to Sup. Ct. Rule 22 petitioner Debra Brown ("Petitioner") respectfully motions the Single Justice for an emergency stay of execution pending the Supreme Court's consideration of pending filing of a petition for certiorari.

The U.S. Court of Appeals issued a decision on August 26, 2024 denying her appeal and preserving the two issues for review by the U.S. Supreme Court. (App 1) Plainly those issues, both the subject matter of circuit splits are: 1. The validity of the U.S.C.A. decision in Montilla[1] and 2. The mandatory vacatur of a District Court decision where the District Court Judge had a reported interest in Bank of America for more than fifteen years of financial report filings. [2] The U.S.C.A. denied petitioner's notice of appeal to the U.S. Supreme Court and denied a motion to stay the execution and the mandate. (App 2) The Massachusetts Housing Court denied petitioner's request for stay of execution (App 3) and ordered the release of all appeal bond funds to the plaintiff (App 4). [3]

As grounds for this emergency motion the Petitioner states the following:

A. There is a reasonable probability that the Court will grant certiorari. This matter involves two substantial issues of high credibility in which there are circuit splits. 1. In Montilla,, et al, Petitioners v. Federal National Mortgage Association, et al, S.Ct. No. 21-688 docketed on November 9, 2021 this Court ordered an answer to

[1] The D.C. Circuit ruled that the Montilla decision was overruled by Collins v. Yellen.
[2] The 2nd Circuit on July 3, 2024 required the vacatur of a District Court judgment due to the Judge's wife owning stock in Bank of America.
[3] Petitioner has paid $137,000.00 in appeal bond funds.

be filed by the U.S. Solicitor General's office and briefed the issue of whether he Federal National Mortgage Association as an instrumentality of the U.S. Government. The DC circuit ruled that the Montilla decision was rendered moot by this Court's decision in Collins v. Yellen. The U.S.C.A. relied on the Montilla decision in denying Petitioner's appeal.

2. On the issue of the application of Section 455(a) and (b) the U.S.C.A. declared the matter untimely and meritless while the 2nd Circuit presented with the same issue issued a decision on July 2, 2024 issuing a vacatur of a district court ruling. This decision was noticed to the U.S.C.A. for the First Circuit by way of a Rule 28(j) letter and the Court disregarded the Second Circuit's ruling. (App 5)

B. There is a strong likelihood that this Court would reverse the Court below on both issues, but most importantly on the second issue that goes to the integrity of the Court. Chief Justice Roberts has stated that maintaining the integrity of the judiciary is of utmost importance.

C. Irreparable harm is imminent to the Petitioner. She stands to lose her home and home office. The title to the property is irreparably broken and the home will become abandoned in a neighborhood of many children. Petitioner offered everything to Fannie Mae to allow this matter to be resolved to protect the children and they refused. (App 6).

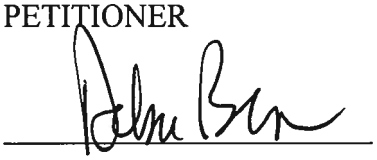
D. The public interest and balance of equities all favor the Petitioner. Protecting private property from taking by the federal government without due process of

law matters to all Americans who believe they own their property although subject to a mortgage. Balance of equities shows that the Petitioner has everything at stake (Fannie Mae has threatened to continue to discredit and bring claims against the petitioner even after they take the $137,000.00 and a 750,000.00 home). Petitioner plans to file with the U.S. Supreme Court prior to the filing deadline of at the earliest November 26, 2024. This stay may only result in a sixty day delay in the government's taking, but could make all the difference for the Petitioner.

Wherefore, Petitioner prays that the Single Justice will grant this emergency motion for stay of execution pending the petition for certiorari to the United States Supreme Court.

Respectfully submitted,

PETITIONER



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Petitioner
October 11, 2024

 App 1

United States Court of Appeals
For the First Circuit

No. 21-1978

DEBRA BROWN,

Plaintiff - Appellant,

v.

BANK OF AMERICA CORPORATION; FANNIE MAE,

Defendants - Appellees.

Before

Kayatta, Gelpí and Rikelman,
Circuit Judges.

JUDGMENT

Entered: August 26, 2024

Plaintiff-appellant Debra Brown appeals from the denial of her motion pursuant to Fed. R. Civ. P. 60(b)(4). Having considered all of the parties' submissions and the record, we affirm the denial of plaintiff's Rule 60(b)(4) motion as both untimely and meritless. See, e.g., Farm Credit Bank of Baltimore v. Ferrera-Goitia, 316 F.3d 62, 66-67 (1st Cir. 2003) (six and a half year delay in bringing Rule 60(b)(4) motion was "extreme" and "untimely" "[b]y any measure"); Montilla v. Fed. Nat'l Mortg. Ass'n, 999 F.3d 751, 759-60 (1st Cir. 2021) (holding, in pertinent part, that Fannie Mae is not a government actor subject to mortgagors' Fifth Amendment due process claims), cert. denied, 142 S. Ct. 1360 (2022). We add that plaintiff's recusal argument regarding the district court judge lacks merit.

The order of the district court is affirmed. All pending motions, to the extent not mooted by the foregoing, are denied. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Debra M. Brown
James W. McGarry
Chad W. Higgins
Edwina Clarke
Marissa I. Delinks
Thomas Joseph Walsh
Neil David Raphael
Samuel Craig Bodurtha

App 2

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the First Circuit

Notice of Docket Activity

The following transaction was entered on 09/25/2024 at 12:10:59 PM Eastern Daylight Time and filed on 09/25/2024

Case Name: Brown v. Bank of America Corporation, et al
Case Number: 21-1978
Document(s): Document(s)

Docket Text:
ORDER entered by David J. Barron,* Chief Appellate Judge; William J. Kayatta, Jr., Appellate Judge; Gustavo A. Gelpi, Jr., Appellate Judge; Lara E. Montecalvo, Appellate Judge; Julie Rikelman, Appellate Judge and Seth Robert Aframe, Appellate Judge. Plaintiff's "notice of appeal" and petition for rehearing en banc have been treated as a petition for panel rehearing and rehearing en banc. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied. The motion to stay mandate and stay execution of the state court's judgment is denied. *Chief Judge Barron is recused and did not participate in the determination of this matter. [21-1978] (GB)

Notice will be electronically mailed to:

Samuel Craig Bodurtha
Debra M. Brown
Edwina Clarke
Marissa I. Delinks
Chad W. Higgins
James W. McGarry

App 3

Date Filed: 9/20/2024 8:59 PM
Housing - Northeast
Docket Number: 12H77SP003422

COMMONWEALTH OF MASSACHUSETTS
COURT OF APPEALS
DOCKET NO.

NORTHEAST HOUSING COURT
Docket No. 12H77SP003422

9/27/24

FEDERAL NATIONAL MORTGAGE ASSOC.,
Plaintiff

vs.

DEBRA BROWN,
Defendant

DEFENDANTS' EMERGENCY MOTION FOR STAY OF EXECUTION AND HOLD ON ESCROW FUNDS

NOW COMES Debra Brown ("Defendant") and respectfully requests this Honorable court to consider a stay of execution and hold on escrow funds for the following reasons:

1. Defendant has an appeal from an alleged void judgment that has been on-going for many years – not due to Defendants' inactivity. The issue presented is the constitutionality of the taking of property without due process of law. A second issue surfaced that the original District Court Judge had a financial interest in one of the parties that would render those judgments void in another federal circuit. The docket from U.S. Court of Appeals for the First Circuit ("USCA") is Exhibit A.
2. On August 26, 2024 a panel of the U.S. Court of Appeals issued a decision in the matter affirming the lower court after two years and two months without a hearing. The decision, although unfavorable, preserved the two issues for a petition to the U.S. Supreme Court (1.

App 4

211

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VIA OVERNIGHT MAIL

October 3, 2024

Clerk
Northeast Housing Court
2 Appleton Street
Lawrence, MA 01840

Re: Federal National Mortgage Association v. Debra Brown
Northeast Housing Court No. SP [illegible]SP003422

Dear Sir/Madam:

As we discussed on the telephone this afternoon, please let this letter serve as a formal request that the Court release the escrow funds that it is currently holding to our client Federal National Mortgage Association related to the above-referenced matter. Please direct the funds to the attention of Thomas J. Santoluccito, Esq. at the above address.

Thank you for your attention to this matter. Please let me know if you need anything further.

Very truly yours,

HARMON LAW OFFICES, P.C.

Thomas J. Walsh

Cc: Ms. Debra Brown

2024 OCT -4 A 10:02

allowed. The Clerk shall release all escrow funds to plaintiff's counsel forthwith.

Timothy F. Sullivan
Judge 10/4/24

Brown & Associates LLC
Legal, Compliance & Regulatory Services
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Beverly Farms, MA 01915
Telephone (978) 921-6688

App 5

July 3, 2024

Maria R. Hamilton
Clerk of Court
U.S. Court of Appeals for First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Suite 2500
Boston, MA 02210

RE: U.S.C.A. 21-1978 – Letter Pursuant to F.R.A.P Rule 28(j)

Dear Clerk Hamilton:

Pursuant to F.R.A.P. Rule 28(j) Plaintiff-Appellant submits a decision Litovich v. Bank of America et al (July 2, 2024) Case 21-2905 U.S. Court of Appeals for the Second Circuit, ruling on the same issue presented in this matter – when a "vacatur" is warranted due to a violation of **28 U.S.C. §455(b)(4)**. The Court described:

> We find that there is a legitimate risk that these kinds of violations will "undermin[e] the public's confidence in the judicial process." Amico, 486 F.3d at 777. As mentioned, there has been media coverage of this § 455 violation, as well as others, and it is an issue the federal judiciary knows it needs to remedy, as recognized by Chief Justice Roberts. See Hon. John G. Roberts, Jr., 2021 Year-End Report on the Federal Judiciary,**9(Dec.31,2021),** **https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf [https://perma.cc/HG7H-UH3T] ("We are duty-bound to strive for 100% compliance [with 28 U.S.C. § 455] because public trust is essential, not incidental, to our function.").**

The Second Circuit addressed the arguments made by the Defendants which are similar to the arguments made in this case by the Defendants.

In this matter, the District Court Judge allowed a defective notice of removal and denied a motion to remand due to a defective notice of removal prior to not allowing an amended complaint and granting the motion to dismiss. A pre-judgment disqualification is required. Vacatur of this District Court Judge's judgments requires remand to the Massachusetts Superior Court who granted a preliminary injunction.

The District Court Judge's Financial statements (2009-2020) filed with the Court containing entries of financial interest in and/or from Bank of America and financial interest in Berkshire Hathaway a ten percent owner of Bank of America began before and spanned the fourteen years of litigation. Oral argument was and is requested.

Sincerely,

/Debra Brown/
Debra Brown
P.O. Box 5265
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(978) 921-6688
BBO# 553018
U.S.C.A. # 7860

LITOVICH v. BANK OF AMERICA CORPORATION USA LLC et al (2024)

United States Court of Appeals, Second Circuit.

Isabel LITOVICH, on behalf of herself and all others similarly situated, United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund, on behalf of themselves and all others similarly situated, Holdcraft Marital Trust, on behalf of themselves and all others similarly situated, Michael V. Cottrell, on behalf of themselves and all others similarly situated, Frank Hirsch, on behalf of themselves and all others similarly situated, Plaintiffs-Appellants, v. BANK OF AMERICA CORPORATION, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, BofA Securities, Inc., Barclays Capital Inc., Citigroup Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., The Goldman Sachs Group, Inc., Goldman Sachs & Co. LLC, JPmorgan Chase & Co., J.P. Morgan Securities LLC, Morgan Stanley, Morgan Stanley & Co. LLC, Morgan Stanley Smith Barney LLC, Natwest Markets Securities Inc., Wells Fargo & Co., Wells Fargo Securities, LLC, Wells Fargo Clearing Services, LLC, Defendants-Appellees.

No. 21-2905

Decided: July 02, 2024

Before: Lee and Nathan, Circuit Judges, and Rakoff, District Judge.*

David C. Frederick, (Gregory Rapawy, Eliana Margo Pfeffer, on the brief), Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., Washington, DC, for Plaintiffs-Appellants. Christopher M. Burke, Scott+Scott Attorneys at Law LLP, New York, NY, for Plaintiffs-Appellants. Walter W. Noss, Kate Lv, Scott+Scott Attorneys at Law LLP, San Diego, CA, for Plaintiffs-Appellants. George A. Zelcs, Chad E. Bell, Ryan Z. Cortazar, Korein Tillery LLC, Chicago, IL, for Plaintiffs-Appellants. Glen E. Summers, Karma M. Giulianelli, Bartlit Beck LLP, Denver, CO, for Plaintiffs-Appellants. Richard C. Pepperman II, (Matthew

J. Porpora, Jonathan S. Carter, on the brief), Sullivan & Cromwell LLP, New York, NY, for Defendants-Appellees The Goldman Sachs Group, Inc. and Goldman Sachs & Co. LLC. Adam S. Hakki, Richard F. Schwed, Shearman & Sterling LLP, New York, NY, for Defendants-Appellees Bank of America Corporation, BofA Securities, Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated. Barry G. Sher, Kevin P. Broughel, Paul Hastings LLP, New York, NY, for Defendant-Appellee Barclays Capital, Inc. Herbert S. Washer, Sheila C. Ramesh, Adam S. Mintz, Cahill Gordon & Reindel LLP, New York, NY, for Defendant-Appellee Credit Suisse Securities (USA) LLC. Robert D. Wick, John S. Playforth, Covington & Burling LLP, Washington, DC, for Defendants-Appellees JPMorgan Chase & Co. and J.P. Morgan Securities LLC. Paul S. Mishkin, Adam G. Mehes, Davis Polk & Wardwell LLP, New York, NY, for Defendant-Appellee NatWest Markets Securities Inc. Jay Kasner, Karen M. Lent, Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY, for Defendants-Appellees Citigroup Inc. and Citigroup Global Markets Inc. John F. Terzaken, Adrienne V. Baxley, Simpson Thacher & Bartlett LLP, Washington, DC, for Defendant-Appellant Deutsche Bank Securities Inc. Richard A. Rosen, Brad S. Karp, Susanna M. Buergel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY, Kannon K. Shanmugam, Jane B. O'Brien, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, DC, for Defendants-Appellees Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley Smith Barney LLC. Jayant W. Tambe, Laura W. Sawyer, Amanda L. Dollinger, Jones Day, New York, NY, for Defendants-Appellees Wells Fargo & Co., Wells Fargo Securities, LLC, and Wells Fargo Clearing Services, LLC.

Plaintiffs-Appellants ("Plaintiffs"), bond investors who bought and sold certain types of corporate bonds from and to Defendants-Appellees ("Defendants"), who are investment bank dealers of those bonds, appeal from the district court's judgment granting Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Several months after the district court's order, the parties learned that the district court judge had presided over part of the case while his wife owned stock in one of the

Defendants, although she had divested that stock before the district court judge issued his decision. Accordingly, not only are Plaintiffs appealing the merits of the district court's decision, but they also contend that the district court judge should have disqualified himself in light of this prior financial interest of his wife.

Thus, we are tasked with deciding whether, pursuant to 28 U.S.C. § 455, vacatur is warranted because the district court judge was required to disqualify himself before issuing his decision. Under § 455(a), a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," including, under § 455(b)(4), when "[h]e knows that . his spouse . has a financial interest . in a party to the proceeding." 28 U.S.C. § 455(a), (b)(4). Here, while there was no direct conflict of interest when the district court judge ruled on the merits of this action, we nonetheless conclude that because § 455(a) and our related precedents required pre-judgment disqualification, vacatur is warranted.

As a result, we VACATE the judgment, and REMAND the case to the district court for further proceedings, consistent with this opinion.

I. Background

Plaintiffs are bond investors who bought and sold certain types of corporate bonds from and to Defendants, who are financial institutions and major dealers in the corporate bond market, including Bank of America Corporation. Plaintiffs brought an antitrust action against Defendants, principally alleging that Defendants violated § 1 of the Sherman Act by "engag[ing] in a pattern of parallel conduct and anticompetitive collusion" to restrict forms of competition that would have "improve[d] odd-lot pricing for bond investors." App'x at 86. As a result of the purported conspiracy, Defendants allegedly "accrue[d] supracompetitive profits" at the expense of individual and smaller investors, including Plaintiffs. App'x at 104.

Plaintiffs filed the initial complaint on April 21, 2020, and the case was assigned to the Honorable Lewis J. Liman, District Judge for the Southern District of New York. Following Plaintiffs' submission of the operative amended Complaint on October 29, 2020, Defendants filed a joint motion to dismiss on December 15, 2020, in which they argued that Plaintiffs failed to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), and Plaintiffs filed their response on January 28, 2021. Oral argument regarding the motion occurred in the district court on September 9, 2021. On October 25, 2021, the district court granted Defendants' motion to dismiss in its entirety, finding that Plaintiffs did not plead a plausible anticompetitive conspiracy, and dismissing the Complaint with prejudice.

On February 25, 2022, four months after the Complaint was dismissed, the Clerk of Court of the Southern District of New York sent a letter to the parties stating that it had been brought to Judge Liman's attention that "while he presided over the [Litovich] case his wife owned stock in Bank of America Corporation." Suppl. App'x at 263. The letter continued:

His wife's stock ownership is imputed to Judge Liman. That ownership of stock neither affected nor impacted his decisions in this case. However, that stock ownership would have required recusal under the Code of Conduct for United States Judges, and thus, Judge Liman directed that [the Clerk of Court] notify the parties of the potential conflict.

Id. The letter did not indicate when Judge Liman learned of the conflict.

A few days later, on March 1, 2022, The Wall Street Journal published an article discussing the high number of recusal violations apparent among the federal judiciary. James V. Grimaldi et al., Fallout From Judges' Financial Conflicts Spreads to Appeals Courts, Wall St. J. (Mar. 1, 2022), https://www.wsj.com/articles/fallout-from-judges-financial-conflicts-spreads-to-appeals-courts-11646155384?st=1o4zhc5b0gqnzj2 [https://perma.cc/7J6Q-FMVW]. The article discussed Judge Liman's failure to recuse himself in this case as an example. Id. It stated that "[t]he [Litovich] case is one of 13 lawsuits in which the judge, after an inquiry last month from the Journal, asked a clerk to file notices to parties in those cases saying he should have disqualified himself." Id.

One week after the clerk's notification to the parties, and one day after The Wall Street Journal article was published, the case was reassigned to the Honorable Valerie E. Caproni on March 2, 2022. On March 14, 2022, the Clerk of Court sent a second letter to the parties, specifying that "the stock holding referenced in [the] February 25 letter was fully divested in July 2021, before the final Opinion and Order . terminating this case was issued in October 2021." Suppl. App'x at 265.

Plaintiffs timely appealed.

II. Discussion

We must decide whether the district court judge's failure to recuse himself sua sponte prior to issuing a decision on the merits of this case—even though a direct conflict did not exist at the time the decision was published—disqualified him under 28 U.S.C. § 455(a), and if so, whether that disqualification warrants vacatur of the decision. On the record before us and for reasons explained below, in particular, guarding against even the appearance of partiality, we answer yes to both inquiries.

A. Statutory Disqualification

Title 28 U.S.C. § 455(a) states, in relevant part, that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section 455(a) has been described as a "catchall recusal provision," In re Aguinda, 241 F.3d 194, 200 (2d Cir. 2001) (quoting Liteky v. United States, 510 U.S. 540, 548, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994) (internal quotation marks omitted)), that "governs circumstances that constitute an appearance of partiality, even though actual partiality has not been shown," Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, 127 (2d Cir. 2003). A judge need not have actual knowledge of the disqualifying circumstance for § 455(a) to apply. Liljeberg v. Health Servs. Acquisition Corp., 486

U.S. 847, 859, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). That is because the purpose of § 455(a) is "to promote public confidence in the integrity of the judicial process," which "does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." Id. at 860, 108 S.Ct. 2194. Accordingly, the test for whether an appearance of partiality exists "is an objective one based on what a reasonable person knowing all the facts would conclude." Chase Manhattan Bank, 343 F.3d at 127; see Aguinda, 241 at 201, ("Where a case, by contrast, involves remote, contingent, indirect or speculative interests, disqualification is not required." (quoting United States v. Lovaglia, 954 F.2d 811, 815 (2d Cir. 1992))).

Among the circumstances requiring disqualification, § 455(b)(4) provides, in relevant part, that a judge "shall also disqualify himself" when "[h]e knows that . his spouse . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4). Section 455(c) imposes the additional duty that a federal judge "should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse." As relevant to the current proceedings, § 455(d)(4) defines "financial interest" as an "ownership of a legal or equitable interest, however small."

Unlike § 455(a), which covers even the appearance of partiality, § 455(b)(4)'s requirement of disqualification applies only when the judge actually knows about the disqualifying circumstance. Liljeberg, 486 U.S. at 859, 108 S.Ct. 2194. Even then, however, the existence of a financial interest on the part of a judge's spouse is not always grounds for automatic disqualification, as a judge may avoid disqualification if he "discloses and divests [the] financial interest." Chase Manhattan Bank, 343 F.3d at 127. Specifically, Section 455(f) provides, in relevant part, that

if any . judge . to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that . his or her spouse . has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the . spouse . divests himself or herself of the interest that provides the grounds for the disqualification.

28 U.S.C. § 455(f) (emphasis added). See Kidder, Peabody & Co. v. Maxus Energy Corp., 925 F.2d 556, 561 (2d Cir. 1991) (holding that the § 455(f) exception applied where we found it unlikely that a district judge "knew of his interest simply because one or two passing references were made about [it]," and the parties did not file corporate disclosure statements at the commencement of the action).

B. Analysis

In the present case, Plaintiffs argue that vacatur is necessary because Judge Liman's wife owned Bank of America Corporation stock for at least part of the time that Judge

Liman presided over this case. Plaintiffs assert that while the record does not reflect precisely when Judge Liman learned of the conflict, recusal was mandatory under § 455(b)(4) if he learned of the conflict before his ruling in October 2021. Alternatively, they argue that even if Judge Liman learned of the conflict after his ruling, disqualification is still warranted because he failed to fulfill his duty under § 455(c) to inform himself of any potential conflict. Plaintiffs likewise maintain that recusal under § 455(a) was "mandatory" because Judge Liman's impartiality could reasonably be questioned, and as such posed a risk of general harm to the parties, other proceedings, and public confidence in the judicial process. Appellant's Br. at 60.

Defendants disagree. They argue that there are no grounds for vacating the judgment under § 455 because Judge Liman's wife fully divested her stockholding in Bank of America Corporation in July 2021, which was approximately two months before oral argument occurred and three months before Judge Liman granted Defendants' motion to dismiss. Defendants also assert that there is no § 455(b)(4) violation because "[t]he chronology suggests that Judge Liman first became aware of his wife's stockholdings in February 2022, when The Wall Street Journal inquired about his wife's investments," which was approximately four months after his October 2021 decision. Id. at 58.[1] They similarly maintain that Plaintiffs' interpretation of § 455(c) would create a "per se rule" that would require " 'mandatory' vacatur if a judge fails to discover a potential conflict." Id. at 59. Finally, Defendants argue in the alternative that even assuming a § 455(a) violation based on the appearance of partiality, this Court's de novo review of the district court's decision to grant the motion to dismiss "ensures that no injustice will occur . and renders any recusal failure harmless." Id. at 58.

Based on this Court's precedent, we agree with Plaintiffs that vacatur is required under § 455(a) because of the uncured financial conflict. We thus do not reach the merits of the case.

"Section 455(a) applies when a reasonable person would conclude that a judge was violating Section 455(b)(4)" due to a conflict of financial interest. Chase Manhattan Bank, 343 F.3d at 128. We focus our attention on § 455(a), rather than § 455(b)(4) itself, because the record lacks clarity on precisely when the district judge learned of the conflict. For our purposes, we assume that Judge Liman had no knowledge of the conflict until after it was reported by The Wall Street Journal, which occurred after Judge Liman issued his decision granting the motion to dismiss. In the absence of actual knowledge by the district judge that "his spouse . has a financial interest . in a party," § 455(b)(4) does not mandate recusal. "Even where the facts do not suffice for recusal under § 455(b), however, those same facts may be examined as part of an inquiry into whether recusal is mandated under § 455(a)." In re Certain Underwriter, 294 F.3d 297, 306 (2d Cir. 2002). Here, the record indicates that Judge Liman presided over this matter during the time that his spouse held an ownership interest in a party to the litigation. This conflict-creating ownership and financial interest existed until some time after the briefing on the instant motion to dismiss was fully submitted. Looking at these facts "fully from the perspective of an 'objective, disinterested observer,' " id. (quoting Aguinda, 241 F.3d at 201), we conclude that it is reasonable to question the partiality of

a judge presiding over a case in which his spouse holds an ownership interest in a party. We therefore hold that the district court violated § 455(a). See also ExxonMobil Oil Corp. v. TIG Insurance Co., 44 F.4th 163, 171–73 (2d Cir. 2022) (assuming a violation of § 455(a) where the district court judge owned stock in one of the parties, even where no facts suggested the judge had knowledge of his financial interest before issuing the judgment); Brock v. Zuckerberg, 2022 WL 1231044, at *3 (2d Cir. Apr. 27, 2022) (summary order) (assuming a violation of § 455(a) where the district court judge's spouse owned stock in a company led by one of the parties, even where no facts suggested the judge had knowledge of his spouse's financial interest before issuing the judgment).

"[I]n determining how best to address a violation of § 455(a)," this Court considers three factors: "(i) the risk of injustice to the parties in the particular case; (ii) the risk that the denial of relief will produce injustice in other cases, and (iii) the risk of undermining the public's confidence in the judicial process." United States v. Amico, 486 F.3d 764, 777 (2d Cir. 2007). We find that this case implicates each of these factors, and hold that vacatur of the district court's judgment is warranted.

As to the first factor, "the risk of injustice to the parties in the particular case," id., there is a plausible risk of injustice to Plaintiffs because it is conceivable, albeit highly unlikely, that the district judge's conflict of interest impacted the outcome of this case. To be clear, we do not question the district judge's reasoned judgment nor mean to suggest that he treated the parties unfairly. Indeed, the Clerk of Court's letter explicitly states that the "ownership of stock neither affected nor impacted" the district judge's decision, Suppl. App'x at 263, and we fully credit that representation. However, the focus of § 455(a) is on avoiding the appearance of partiality, even absent an explicit showing of it. See Chase Manhattan Bank, 343 F.3d at 127, 133; see also Liljeberg, 486 U.S. at 867–68, 108 S.Ct. 2194 (noting that even where district court judge did not know of his fiduciary interest in the litigation, he should have known, which was "precisely the kind of appearance of impropriety § 455(a) was intended to prevent"). Because the district judge's impartiality towards the parties may reasonably be questioned based on this appearance, we therefore find that the first factor militates in favor of vacatur.

As to the second factor for assessing a violation of § 455(a), "the risk that the denial of relief will produce injustice in other cases," Amico, 486 F.3d at 777, we find that the type of conflict of interest presented here risks injustice in other cases. That injustice, as highlighted by the press coverage of this and other cases regarding disqualification, is that federal judges will fail to recuse themselves in future cases, which—as Plaintiffs correctly argue—may "increas[e] the likelihood that conflicts [ ] go unnoticed and unremedied." Appellants' Reply Br. at 30. As we have stated before, "judges have an obligation to exercise reasonable effort in avoiding cases in which they are disqualified," and accordingly bear the burden of complying with the strictures of § 455(a). Chase Manhattan Bank, 343 F.3d at 130. Thus, by enforcing it here, we hope to "prevent a substantive injustice in some future case" by urging our peers "to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." Liljeberg, 486 U.S. at 868, 108 S.Ct. 2194.

Third, we find that there is a legitimate risk that these kinds of violations will "undermin[e] the public's confidence in the judicial process." Amico, 486 F.3d at 777. As mentioned, there has been media coverage of this § 455 violation, as well as others, and it is an issue the federal judiciary knows it needs to remedy, as recognized by Chief Justice Roberts. See Hon. John G. Roberts, Jr., 2021 Year-End Report on the Federal Judiciary, 9 (Dec. 31, 2021), https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf [https://perma.cc/HG7H-UH3T] ("We are duty-bound to strive for 100% compliance [with 28 U.S.C. § 455] because public trust is essential, not incidental, to our function."). With that said, an appearance of partiality "must have an objective basis beyond the fact that claims of partiality have been well publicized," Aguinda, 241 F.3d at 201 (emphasis added), because a "resort to appearances" risks a "potential slippery slope resulting from the fact that appearances are often in the eye of the beholder" and "can be manufactured by inspiring publicity of repeated claims of bias," Chase Manhattan Bank, 343 F.3d at 129. "Judicial inquiry may not therefore be defined by what appears in the press." In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1309 (2d Cir. 1988). However, we nevertheless agree that recurrent controversies legitimately risk undermining public confidence in the federal judiciary and its function: the fair adjudication of the law. Because we find that this conflict presents an appearance of impropriety, we therefore conclude that vacating the judgment both complies with our statutory mandate and is the best means of dispelling any potential loss of faith in the judiciary.

Finally, we find that while Judge Liman's wife divested her stock approximately two months before oral argument on the motion occurred, and three months before Judge Liman granted Defendants' motion to dismiss, vacatur is still warranted. We have held both that "[w]here a case . involves remote, contingent, indirect or speculative interests, disqualification is not required," Lovaglia, 954 F.2d at 815, and that divestiture under § 455(f) can cure conflicts of interest, see Kidder, 925 F.2d at 561. But while "[j]udges may preside over cases in which they appear disqualified," they can "do so only in a very technical sense," such as when a district judge issues "routine, standard scheduling orders in a large number of newly filed cases, missing a disqualifying party in a case with several parties." Chase Manhattan Bank, 343 F.3d at 129. That was not the case here. Although divestiture occurred three months before the district court's decision, the parties already had filed their motions and the case was well past the "technical" stage. See id. at 131 ("While Section 455(f) allows a judge to divest a newly-discovered disqualifying interest and continue to preside over a case, that divestiture cannot cure circumstances in which recusal was required years before and important decisions have been rendered in the interim."). Permitting curative § 455(f) divestiture once a litigation has advanced to substantive disputes may implicate the risks to the present parties, other proceedings, and public confidence already discussed, and is a determination that must be analyzed on a case-by-case basis. Similarly, de novo review of the merits of the underlying claim by a Court of Appeals does not solve this problem because the root issue—repeated violations of § 455—goes unaddressed if the burden of ameliorating it is shifted to reviewing courts. Here, due to the length of time that Judge Liman presided over this case with a conflict—albeit almost certainly unknowingly—and the substantive motions that came before him in that period, we find

that his wife's July 2021 divestiture of Bank of America stock was not sufficiently curative. Accordingly, recusal under § 455(a) was required, and we therefore vacate the decision of the district court granting Defendants' motion to dismiss.

III. Conclusion

For the foregoing reasons, we VACATE the judgment, and REMAND the case to the district court for further proceedings before Judge Caproni, consistent with this opinion.

FOOTNOTES

1. See Grimaldi, supra page 8 ("The 2020 suit against 10 banks seeks to recover damages that plaintiffs say exceed $10 billion for overcharging them on bond purchases. Judge Liman didn't disclose that a family member owned as much as $15,000 in Bank of America, a defendant. Last year, Judge Liman granted the motion of defendants including Bank of America to dismiss in the case with prejudice.").

Per Curiam:

CERTIFICATE OF SERVICE

I, Debra Brown, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 3, 2024.

/s/Debra Brown
Debra Brown

App C

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION # 2477CV00971

Essex, ss

Debra Brown,
Plaintiff

Vs.

Harmon Law Offices PC, Francis Nolan and Commonwealth Auction

PLAINTIFF'S NOTICE OF DISMISSAL

Pursuant to Mass.R.Civ.P. 41, Plaintiff Debra Brown ("Plaintiff") voluntarily files this notice of dismissal. (Exhibit A)

Respectfully Submitted,

Debra Brown
BBO# 553018
P.O. Box 5265
Beverly, MA 01915
(978) 921-6688

Date: October 6, 2024

When Recorded Return To:
Bank of America, N.A.
TX2-979-01-19 REL
P.O. BOX 619040
Dallas, TX 75261-9943

SO.ESSEX #13 Bk:37133 Pg:542
11/06/2018 08:16 AM DIS Pg 1/1
eRecorded

ROBERT T BROWN JR, DEBRA M BROWN
99 HOMESTEAD CIRCLE
HAMILTON, MA 01982

UID: 7105c1cc-8da1-43bf-aeb5-72972d1e4bb0
DOCID_543PRAZ-4082156154399

DISCHARGE OF MORTGAGE

Bank of America, N.A., by First American Mortgage Solutions, LLC, as Attorney-in-Fact , current mortgagee of a mortgage from ROBERT T BROWN JR, DEBRA M BROWN to UNION TRUST MORTGAGE dated 08/26/1993 recorded on 08/31/1993 with ESSEX County Registry of Deeds for the State of Massachusetts, Book 12092, Page 84, Doc # 19930831004780 acknowledged satisfaction of the same.

Property Address: 99 HOMESTEAD CIRCLE
HAMILTON, MA 01982

Title Certificate Number: N/A

WITNESS my hand this 05 day of November, 2018.

Bank of America, N.A., by First American Mortgage Solutions, LLC, as Attorney-in-Fact

By: _____
Marc Zehr
Assistant Secretary

State of ARIZONA
County of MARICOPA

Limited Power Of Attorney previously recorded on 01/05/18 in Book 36456, Page 222, Doc# 581

On 11/05/18, before me, Shannon R Franco, Notary Public, personally appeared Marc Zehr, Assistant Secretary of First American Mortgage Solutions, LLC, as Attorney-in-Fact for Bank of America, N.A. whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.

_____
Shannon R Franco, Notary Public

SHANNON R FRANCO
Notary Public Arizona
Maricopa County
My Comm. Expires Apr 8 2022

Bank of America
2505 W. Chandler Blvd / AZ1-805-01-46
Chandler, AZ 85224

November 12, 2018

[redacted]
99 HOMESTEAD CIRCLE
HAMILTON, MA 01982

TRACK # 773705741277

997

RE: 99 HOMESTEAD CIRCLE
HAMILTON MA 01982

Enclosed are important documents related to your recent pay off of a Bank of America, N.A. home loan.

What you need to know

Our records indicate that you paid off a Bank of America, N.A. loan regarding the property referenced in the enclosed document. In accordance with Massachusetts law, we've enclosed a copy of the recorded Discharge of Mortgage that releases the lien on your property.

What you need to do

There's nothing you need to do. We recommend keeping this documentation for your records.

Questions?

If you have any questions, please call Bank of America at 800.669.6607, Monday through Friday, 8 a.m. to 9 p.m. Eastern.

Paying Agent – Rust Consulting, Inc.
P.O. Box 8054
Faribault, MN 55021-9454

IMPORTANT PAYMENT AGREEMENT INFORMATION ENCLOSED

B *1811881345-9286224*

**SNGLP
[redacted]BROWN
99 HOMESTEAD CIR
SOUTH HAMILTON, MA 01982

Independent Foreclosure Review

July 15, 2013

Your payment is enclosed.

Reference Number: 1811881345
Property Address:
99 HOMESTEAD CIRCLE
SOUTH HAMILTON MA 01982

Si usted habla español, tenemos representantes que pueden asistirle en su idioma.

Dear [redacted] Brown,

You were recently sent a notice that you are eligible to receive a payment as a result of an agreement between federal banking regulators and Bank of America in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes.

This letter includes your check. It also explains the amount of the payment, why you are receiving a payment, how to cash the check, and other important information and disclosures.

Your payment is: $6,000.00.

Why you are receiving a payment

Earlier this year, Bank of America entered into an agreement with federal banking regulators—the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System. This agreement resolved the Independent Foreclosure Review required by the regulators. Additional information about this agreement can be found at www.occ.gov and www.federalreserve.gov.

Regulators determined your payment amount based on the stage of your foreclosure process and other considerations related to your foreclosure.

How to cash the check

You must cash or deposit the check within 90 days, or the check will be void. All borrowers listed on the check must sign it to cash it.

The payment amount is final.

There is no process to appeal the payment.

Continued on reverse side

Important information

- By cashing or depositing the check, you do not waive any legal claims against your servicer and you may pursue additional actions related to your foreclosure.

- Cashing or depositing the check may affect your taxes or public assistance benefits. Neither the paying agent —Rust Consulting, Inc., nor the regulators can advise you on tax liability or any effect on public assistance. If you have questions, you may consult a tax advisor or qualified individual or organization. You may also visit www.independentforeclosurereview.com/taxinfo for information about potentially taxable components of your payment. If required, tax documentation, such as a Form 1099, will be sent to you in January 2014.

- You may be eligible for foreclosure prevention assistance. To explore your options, contact a Bank of America specialist at 1-888-325-5381.

- If you need additional help with foreclosure prevention, please contact the Homeowner's HOPE Hotline at 1-888-995-HOPE (4673) (or at www.makinghomeaffordable.gov) and they can put you in touch with a U.S. Department of Housing and Urban Development approved nonprofit organization that can provide **free assistance.**

- Please refer this letter to your attorney or authorized representative, if you are represented by an attorney or other authorized third-party representative regarding a foreclosure, bankruptcy case involving this mortgage loan, or the Independent Foreclosure Review.

- This payment does not mean that you necessarily suffered financial injury or harm.

Other disclosures

This letter is not an attempt to collect a debt or to impose personal liability for any obligation, including, without limitation, any obligation that was discharged, or is subject to an automatic stay in bankruptcy under Title 11 of the United States Code.

Information you provided as part of the Independent Foreclosure Review may not be used for any other purpose. If you would like Bank of America's internal records to include updated contact or personal information for future correspondence or notices, then you must separately provide your new contact or personal information directly to the servicer by calling 1-888-325-5381.

If you have any questions, please call the paying agent—Rust Consulting, Inc.—at 1-888-952-9105, Monday through Friday, 8 a.m. - 10 p.m. ET or Saturday, 8 a.m. - 5 p.m. ET.

Si tiene preguntas, puede llamar al número de teléfono 1-888-952-9105 para hablar con un representante.

Assistance is also available from the toll-free number in more than 200 languages, including Chinese, Korean, Vietnamese, Tagalog, Hmong, and Russian.

提供中文幫助。	Trợ giúp hiện có bằng tiếng Việt.	Peb muaj cov neeg hais lus Hmoob pab nej.
한국어 도움을 제공합니다.	Available ang tulong sa wikang Tagalog.	Помощь на русском языке.

Sincerely,

Paying Agent—Rust Consulting, Inc.

CERTIFICATE OF SERVICE

I, Debra Brown, hereby certify that on this 6th day of October 2024, I mailed by U.S. Mail a true and accurate copy of to Harmon Law Offices PC.

.

/s/ Debra Brown
Debra M. Brown (BBO#553018)

.

October 6, 2024

Gmail

Debra Brown <dbrown@selfauditor.com>

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Debra Brown <dbrown@selfauditor.com> Sun, Oct 6, 2024 at 4:07 PM
To: Thomas Santolucito <tsantolucito@harmonlaw.com>, "McGarry, James W" <JMcGarry@goodwinlaw.com>, "Bodurtha, Samuel C." <sbodurtha@hinshawlaw.com>

Attorney Santolucito,

From this email I discern that you want to keep going and I do not. Attached is a Notice of Dismissal filed in the Superior Court that includes an exhibit: the discharge of mortgage from Bank of America recorded in the registry and the national foreclosure law settlement payment for determined foreclosure defects. Robert Brown gave a quit claim deed to me in 2008 and another in 2015. He has no interest in the property, never was served for the Housing Court and never made any appearance - you obtained a judgment and execution against a person who never was served or appeared before that Court.

Bank of America recorded a discharge of mortgage in 2018. The only defect on this title at this time is the foreclosure deed filed in 2013 that states that FNMA is in possession which as of October 6, 2024 they are not. A homestead is on the registry and a factual 5b affidavit. The petition to the U.S. Supreme Court was already written and was filed in 2022. It only needs a few pages replaced.

The only clean way I see out of this is a quitclaim deed from FNMA retracting the foreclosure deed and sending a letter to the Town of Hamilton to put my name back as property owner responsible for all taxes and water bills. Also a second discharge of mortgage from Bank of America for any other mortgages out there. In return we could sign releases for all and a confidentiality agreement to never speak about this matter again or the settlement terms. (release of costs for both parties)

In the copy attached that has additional pictures, you can see that the pool is not covered and I have contacted the pool company twice. The house is in a fragile state needing a septic system, siding, roofing, fencing and replacement of all the wood trim. You evicting me keeps you and your clients responsible for a lot of potential liability that I can no longer prevent. I certainly would not be getting a "free house". I paid $137,000 in an appeal bond, $150,000 in maintenance and upkeep for 15 years and much of my livelihood. It will cost $100s of $1000's to salvage and years of work. I certainly would not be a "winner."

[redacted] Your email references a failed repurchase which never happened. There has never been an offer to repurchase made, a modification or any offer to settle in the fifteen years that has been presented to me. Please let me know what you plan to do with the execution.

Regards,
Debra
978-921-6688
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

[Quoted text hidden]

nod with pictures_1728239396291.pdf
858K

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Debra Brown <dbrown@selfauditor.com> Mon, Oct 7, 2024 at 5:04 PM
To: Thomas Santolucito <tsantolucito@harmonlaw.com>

Tom,

After our conversation I am considering the following. In exchange for the releases that you requested.

1. 60 days
2. No derogatory remarks on my credit
3. No board of bar overseers complaints
4. Mutual release of all claims from all parties
5. No actions for attorneys fees and costs
6. Non-disclosure agreement
7. Middle of winter, consider extension, if impossible to find housing.

Please let me know if you will consider this.

Regards,

Debra

[Quoted text hidden]

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Thomas Santolucito <tsantolucito@harmonlaw.com> Tue, Oct 8, 2024 at 10:08 AM
To: Debra Brown <dbrown@selfauditor.com>

Debra,

Thank you for speaking with me yesterday. I reviewed your proposals with Fannie Mae. Fannie Mae is only willing to a consider a settlement with you upon the following terms:

1. Fannie Mae agrees not to levy upon the execution for 30 days.**
2. You agree to provide a deed conveying any remaining right, title or interest you may have in the property (if any), to Fannie Mae.
3. You agree to record a revocation/withdrawal of the 5B affidavit or anything else that you may have been recorded to cloud title to the property. You also agree not to record anything further concerning the foreclosure sale and property;
4. You agree to dismiss all pending litigation, withdraw/dismiss all pending appeals and agree not to file anything further; and
5. You provide a general release all claims against all parties.
6. You agree to execute a settlement agreement memorializing these terms.

** Fannie Mae has some flexibility on the vacate date and may be willing to give you some more time if you're in agreement with the remaining terms. All of the other terms listed above are non-negotiable and I'm told that Fannie Mae will not agree to any additional terms. If I can get Fannie Mae to approve the 60 days you requested (I don't have specific authority for that yet), would you be agreeable to the remaining terms?

Thanks,

[Quoted text hidden]
[Quoted text hidden]

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Debra Brown <dbrown@selfauditor.com> Tue, Oct 8, 2024 at 11:49 AM
To: Thomas Santolucito <tsantolucito@harmonlaw.com>

Tom,

It was my understanding that I agreed to all those terms yesterday except that the releases be **mutual releases** and sixty days was requested. I have asked a colleague of mine to send over a mutual release that I can send you as a draft if that would be helpful. Thank you.

Debra

[Quoted text hidden]

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Thomas Santolucito <tsantolucito@harmonlaw.com> Tue, Oct 8, 2024 at 12:02 PM
To: Debra Brown <dbrown@selfauditor.com>

You added some additional terms that Fannie Mae is not in agreement with (credit reporting, etc). Also, Fannie Mae will not consider a mutual release and is unwilling to negotiate any of its terms, other than the vacate date.

All of that said, if I can get approval for the 60 days you requested – are the remaining terms listed in my previous e-mail acceptable to you?

Thanks.

[Quoted text hidden]
[Quoted text hidden]

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Debra Brown <dbrown@selfauditor.com> Wed, Oct 9, 2024 at 9:28 AM
To: Thomas Santolucito <tsantolucito@harmonlaw.com>, "McGarry, James W" <JMcGarry@goodwinlaw.com>, "Bodurtha, Samuel C." <sbodurtha@hinshawlaw.com>

Tom,
Please confirm that you informed your client that in addition to the paragraph I proposed on Sunday, that I offered in our discussion to give any amount of money to resolve as I proposed.

Your email to me yesterday appears to be a threat to go after my bar license, sanctions, attorneys fees etc, after I release all to your client. You have already received $137,000.00 that was paid on an appeal bond, while an appeal is still pending (petition for the Supreme Court is not due until November 26, 2024 at a minimum). The petition that was filed in 2023 is essentially the petition that is applicable to this First Circuit decision. As I stated in our call, I recommend you and your client read that petition.

For the record, I offered everything to resolve and you replied that Fannie Mae is unwilling to negotiate any of its terms.
Regards,
Debra
[Quoted text hidden]

Gmail

Debra Brown <dbrown@selfauditor.com>

Brown v. Harmon Law Offices - Essex Superior Court # 2477CV00971

Thomas Santolucito <tsantolucito@harmonlaw.com> Wed, Oct 9, 2024 at 11:01 AM
To: Debra Brown <dbrown@selfauditor.com>, "McGarry, James W" <JMcGarry@goodwinlaw.com>, "Bodurtha, Samuel C." <sbodurtha@hinshawlaw.com>

Debra,

As you know, any communications between myself (or my office) and my client are privileged and I am prohibited by law from disclosing the content of such communications to you. As I informed you previously, Fannie Mae rejected the additional terms you had proposed and that should be sufficient for your purposes.

Despite the 14 years of constant litigation (at a very substantial expense to my client) where my client has prevailed at each stage, Fannie Mae is attempting in good faith to negotiate a peaceful end to this dispute that would provide you with some additional time to relocate and spare everybody the need for a formal eviction/lockout, in exchange for the terms outlined below. Fannie Mae is unwilling to expand the scope of any proposed agreement to include other matters and it is not willing to engage in protracted negotiations at this stage.

I take it by your response that you are not willing to consider an agreement under Fannie Mae's proposed terms and, if that is the case, I have been instructed to send the execution for service. If my understanding is incorrect and if you are willing to consider a settlement under these specific terms, please let me know by the end of business today. Otherwise, I have no choice but to proceed as our client has instructed.

Thanks,

Tom

1. Fannie Mae agrees not to levy upon the execution for 30 days.**
2. You agree to provide a deed conveying any remaining right, title or interest you may have in the property (if any), to Fannie Mae.
3. You agree to record a revocation/withdrawal of the 5B affidavit or anything else that you may have been recorded to cloud title to the property. You also agree not to record anything further concerning the foreclosure sale and property;
4. You agree to dismiss all pending litigation, withdraw/dismiss all pending appeals and agree not to file anything further.
5. You provide a general release all claims against all parties; and
6. You agree to execute a settlement agreement memorializing these terms.

** Fannie Mae has some flexibility on the vacate date and may be willing to give you some more time if you're in agreement with the remaining terms

Thomas J. Santolucito

[Quoted text hidden]
[Quoted text hidden]

No. 24M

IN THE SUPREME COURT OF THE UNITED STATES

DEBRA M. BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION AND BANK OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the First Circuit

EMERGENCY MOTION FOR STAY OF EXECUTION

CERTIFICATE OF COUNSEL

As counsel, I hereby certify that this motion is presented in good faith, not for delay and is limited to the grounds allowed for in S.Ct. Rule 44.2.

DEBRA BROWN, ESQUIRE
S. CT. NO. 264176
B.B.O. 553018
P.O. Box 5265
Beverly, MA 01915
(978) 921-6688(tel)
dbrown@selfauditor.com

Petitioner
October 11, 2024

No. 24M

IN THE SUPREME COURT OF THE UNITED STATES

DEBRA M. BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION AND BANK OF AMERICA N.A.

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the First Circuit

EMERGENCY MOTION FOR STAY OF EXECUTION

CERTIFICATE OF SERVICE

I hereby certify that this petition for rehearing was mailed electronically and first class mail to the attorneys of record in this proceeding. .

DEBRA BROWN, ESQUIRE
S. CT. NO. 264176
B.B.O. 553018
P.O. Box 5265
Beverly, MA 01915
(978) 921-6688(tel)
dbrown@selfauditor.com

Petitioner
October 11, 2024