NO: 24A470

IN THE

SUPREME COURT OF THE UNITED STATES

MARGALY PHILIPPE – **PETITIONER**

VS.

Wells Fargo, N.A. as Trustee for Option One Mortgage Loan, Trust 2007-FXD1 –

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MASSACHUSETTS SUPREME JUDICIAL COURT

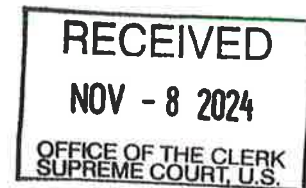
MOTION TO EXTEND DEADLINE FOR PETITION FOR WRIT OF CERTIORARI

MARGALY PHILIPPE

55 YOLANDA DRIVE

BROCKTON, MA 02301

(508) 345-9186



MOTION FOR EXTENSION OF DEADLINE TO FILE PETITION FOR WRIT OF CERTIORARI

NOW COMES Petitioner Margaly Philippe and requests an extension of time for 60 days to file her Writ of Certioriari requesting this Honorable Courts review. Below is the general posture of this controversy as background as to its public interest and then request for extraordinary consideration of this last minute request for extension of time to file.

Petitioner was denied reconsideration of her denial for Further Appellate Review on August 8, 2024, by the Massachusetts Supreme Judicial Court in Wells Fargo, N.A. as Trustee for Option One Mortgage Loan, trust 2007-FXD1 v. Philippe docket no. FAR-29662. She attaches the relevant decisions in the manner that will be provided with her Petition as well as a Statement of issues and related cases including those of her four hopefully-joint petitioners.

Background and Public Interest

Petitioner Margaly Philippe is one of five petitioners herewith. All are similarly situated as jointly being denied reconsideration on the same day by the Massachusetts Supreme Judicial Court. Together they had filed for a joining of their reconsiderations of denial of their individual requests for Further Appellate Review ("FAR") of the Appeals Court decisions in the Commonwealth of Massachusetts. (Petitioner files singly because it is not clear if they were joined for reconsideration

of the denial of their FARs or not but believes for effective economic use of judicial resources the US Supreme Court is best served by reviewing them together.)

These five cases represent denials of review in hundreds of Massachusetts cases similarly situated during this 20-year period of a historic rate of foreclosures in the United States.

The Commonwealth of Massachusetts was arguably the sixth hardest hit state, as measured during the height of this foreclosure period.

Massachusetts has a legislated, modified foreclosure by sale foreclosure scheme. However, in these five cases, and close to 100% of all purported foreclosures by sale in Massachusetts, numbering in the vicinity of 125,000, the legislatively mandated procedure of review by a court of competent jurisdiction as an element of foreclosure by sale auction scheme has been systematically omitted by the foreclosing entities/"person selling" (MGL Chapter 244 §§12 & 13.) This step enacted in two parts in 1851 & 1854 was complied with through at least 1996 according to available case law. Failure to comply with the statutes compromising the scheme voids the attempted foreclosure by operation of law. (This and numerous statutory and regulatory unwaivable requirements have been systematically omitted or directly contravened in these cases.)

Instead, the foreclosing entities, if they are the foreclosure purchaser or a third-party purchaser (overwhelmingly investors) have impermissibly venue

shopped to avoid a court jurisdiction legislatively authorized to determine true title controversies. The eviction proceeding by Massachusetts statute and close to 200 years of jurisprudence cannot be used to settle a true title controversy.

The Housing Courts, which now adjudicate close to 100% of these cases post-purported foreclosure, explicitly both by recent jurisprudence and statutory law are only authorized to recognize a defendant's affirmative defense or counterclaim that they remain the property title holder. Explicitly omitted is adjudication in contradiction as to the title claim of a plaintiff who commences an eviction case in the Housing Courts. These cases are brought in the Summary Process subject matter only authorized to decide possession.

While a settled title was explicitly legislated when post-purported foreclosure situations were legislatively permitted to use the traditional tenant-landlord eviction procedure with enactment in 1879 (in direct legislative correction to Massachusetts Supreme Judicial Court decisions of that year). The legislated necessity of a predetermined "valid title" was written into the statutory language, in existence to this day.

Recent SJC *stare decisis*[1] has affirmed that once it becomes "apparent" to an eviction case judge that the eviction plaintiff may lack standing, because they are

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[1] *Rental Property Management Services v. Hatcher,* 479 Mass. 542 (2018) [SJC-12373] and *Cambridge Street Realty, LLC v. Stewart,* 481 Mass. 121 (2018) [SJC 12440, SJC 12563]

either not the owner or not the lessor, the judge in question must first resolve that standing issue, before proceeding.

In these 5 cases and thousands of others, defendant-homeowners have filed in their Answer their challenge to the Plaintiff purported purchaser's claimed standing as the preexisting title holder. In these 5 cases (and in the majority of other cases known to the 5 petitioners' extensive network of homeowner foreclosure fighters) the eviction proceeding has never been suspended for adjudication of the title or for resolving the Plaintiff's burden of proof of the ownership-requirement .

Further, extensive evidence in social science research, which numerous courts have already relied upon, has made it well recognized that the unprecedented rate of default and foreclosure proceeds from an unprecedented extent of predatory loans, known in Massachusetts jurisprudence as "doomed to foreclosure". The Massachusetts Supreme Judicial Court in *HSBC as Trustee v. Morris,* 490 Mass. 322 (2022) has recently clarified the requirement that review of the origination of the loan as to predatory violations is required. In 3 of these cases, request for review under that new *stare decisis* was denied summarily.

Further, legitimate social science research several years ago documented clear racial and gender bias in Housing Court eviction case outcomes. These 5 cases include exemplifications documented and argued as to such biases. The Massachusetts

judiciary's Access to Justice Commission 2016 study found that 98% of the time defendants lose in eviction cases. All of the *prima facie* evidence of extensive and seriously damaging discrimination in the loss of your unalienable right to possession of real property under Article I of the Massachusetts Bill of Rights (Part the First of the Commonwealth's Constitution), without constitutional due process rights is also extensively documented in these 5 case records.

An associated proceeding in the Massachusetts Supreme Judicial Court in the ultimately combined 46 homeowner multi-party petition, known as *Adjartey v. Central Housing Court,* 481 Mass. 830 (2019) documented to the SJC the unequal treatment and denial of extensive due process rights by the Housing Court in these post-purported foreclosure eviction cases up to the time of the filing of that petition. Since COVID, more explicitly, the Housing Court (and two of the other 3 courts with legislated jurisdiction over eviction proceedings in Massachusetts) have published suspension of the due process rules unique to eviction cases, known as the Uniform Summary Process Rules, and have announced they will continue to so suspend them indefinitely at this time.

In every one of these cases, therefore, the suspension of all due process rules

is published from the Housing Court Division to the world.[2]

Basis of Extension to File

The petitioners herein are requesting extension of the date to file, because there are two more Further Appellate Reviews of two similarly situated litigants and cases sitting at the Massachusetts Supreme Judicial Court at this time. One of them, the factual record is a far simpler exposition of the above denials. If the Supreme Judicial Court does not take that Further Appellate Review, nor the other similarly situated homeowner (whose case lacks only the possession part of the problems experienced herein) then this matter will be fully ripe for consideration by the U.S. Supreme Court.

If, instead, the Massachusetts Supreme Judicial Court takes these two cases,

[2] The Summary Process Rules, which are unique to eviction cases in Massachusetts, were specially created:

> "The summary process statute, G.L. c. 239, and the Uniform Summary Process Rules, evidence the General Court's clear intent that possession of residential dwellings be recovered through a carefully-constructed procedure which invokes vigilant judicial supervision in situations where fundamental rights to home and shelter are uniquely and commonly susceptible to abuse." Brief, p.38, Mass. Attorney General Scott Harshbarger, *Attorney General v. Dime Savings Bank FSB,* 413 Mass. 284, (1992)

Summary Process Rule 1 includes that "Procedures in such actions that are not prescribed by these rules shall be governed by the Massachusetts Rules of Civil Procedure …". Therefore, all due process rules that could apply to these cases are, likewise, in suspension.

and:

(i) adjudicates all the implicated real property rights (especially as to title, mortgaging and foreclosure, but also as to possession). It would have to do so in conformance with the history of not only real property law and possession law which have further eroded since its first decision in the *U.S. Bank as Trustee v. Ibanez*, (Jan. 7, 2011). It would also have to enforce the legislated due process protective mandated statutory proceeding to review foreclosure by sale auctions, and reinstates the full panoply of summary process due process rules in their full bodied form.

Further, the Massachusetts Supreme Judicial Court needs to adjudicate these matters in compliance with the 1976 amendment to Massachusetts Bill of Rights Article I as to the explicit constitutional promulgation of equal property rights for the five protected classes listed therein.[3]

To date, in the almost 50 years since this constitutional amendment amendation, the Massachusetts Supreme Judicial Court has avoided all such review and enforcement. At best, this leaves to the lower courts what appears to be a discretionary

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[3] Massachusetts Constitution Amendment Article CVI: Article I of Part the First of the Constitution is hereby annulled and the following is adopted:-
All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

obligation, which has, in the jurisprudence of this time period, been shown to be the equivalent of allowance of discrimination. [4]

However, it is not unreasonable to hope given that these matters have now devolved to the point, arguably, of no meaningful judicial enforcement in these areas, that the Massachusetts Supreme Judicial Court will finally act and intervene and this Honorable Court will not need to take up these matters.

Request for Last Minute Extension Given Extraordinary Circumstances

Petitioner Margaly , as one these hopefully five joint petitioners, apologizes to the Court and requests extraordinary consideration.

The Petitioners realized from the rules, now, that they should have filed for this extension 10 days before the deadline. They had delayed in preparing, because there was every hope that the Massachusetts Supreme Judicial Court would pick up, by now, one of the other similarly situated Further Appellate Review petitions, or

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[4] In Miller v. Countrywide Bank, N.A. 571 F. Supp. 2d 251,254 (D. Mass. July 30,2008), Judge Nancy Gertner of the United States District Court for the District of Massachusetts held: "Where the allocation of subjective decision-making authority is at issue, the "practice" amounts to the *absence* of a policy that allows racial bias to seep into the process. Allowing this "practice" to escape scrutiny would enable companies responsible for complying with anti-discrimination laws to "insulate" themselves by "refrain[ing] from making standardized criteria absolutely determinative." Watson v. Fort Worth Bank, 487 U.S. 977,990 (1988)…." The allowance of such "seepage" evades the special judicial role for enforcement of equal rights and due process.

address the case that the Supreme Judicial Court reopened for reconsideration that was heard.

This last is the *FNMA and Cardoso v. Branch,* SJC-13510 CASE. A*micus* filings into that case by Grace C Ross included irrefutable demonstration of historic level fraud on the SJC and Massachusetts Court; this was provided with Massachusetts Registries of Deeds evidence of the front page of Foreclosure Deeds in some 19,000 foreclosures by sale situations (calculated from 814 actual hard copy examples submitted to the SJC.)

These Foreclosure Deeds show a violation of Massachusetts statutory consumer and real property statutory and regulatory law. The core violations was reaffirmed as still in force in, arguably, the most famous case in this historic foreclosure crisis of *U.S. Bank National Association v. Ibanez,* 458 Mass. 637 (2011). The proof of this violation is based upon the wording published on the front of each of these Foreclosure Deeds of exercising an exemption under Massachusetts Department of Revenue law which was not available to mortgagee who published and purportedly executed these foreclosures by sale; this proves up the facts of these estimated 19,000 illegal foreclosures. Because of Massachusetts judicial requirements, this also represents 19,000 to perhaps 60,000 fraudulently entered and prosecuted judicial proceedings.

Petitioners had full faith that either that case or the 3 FARs awaiting Supreme Judicial Court acceptance or denial meant that they would not need to seek this Court's review.

Secondly, they are all *pro se*. None of them have ever even looked at U.S. Supreme Judicial Court requirements. This is also 5 *pro se* litigants needing to coordinate and work together and with their extensive nonlawyer support team. Thereby, the process of getting all of the paperwork and all the filing together, alone, is, shall we say, more than daunting.

Third, they are unfamiliar with the rules. They had to fill out new paperwork, for which their extensive network has no templates, and learn the procedures and standards for the Court, the last of which they hope they have done an acceptable job of understanding.

Fourth, this is a case worthy of preserving. Given that the historic rate of foreclosures has led to unprecedented scale of impact and harm to U.S. households. For example, during the first 4 years of the historic foreclosure crisis between 2005-2009: Latino households lost 66% of median wealth; Black households lost 54% median wealth; Asian households lost the 53% median wealth loss with 34% attributable to foreclosures.[5] While that research by the Pew Charitable Trust was only done

[5] Kochhar R, Fry R, Taylor P. Twenty-to-One: Wealth Gaps Rise to Record Highs

for the first 4 years of historic rates of foreclosure, foreclosures continue at an un-precedented rate in this, the 20th year of this crisis.

Research by a Northeastern Law class, guided by their professor, has also just yielded a surprising, concerning and instructive result. In their commencing their review of states with similar fundamental property law as to that of Massachusetts (for instance, the Statute of Frauds as to real property first promulgated in English law in 1673), they have found in the 4 states whose lexicon they have researched extensively at this point: in none of those states, have the kind of litigated attempts to enforce their real property laws, as exist in now extensive Massachusetts jurisprudence, even appear. That is, this critical are of real property rights – one of three unalienable rights – which has been so profoundly endangered and done so in violation of the 14th and, often, 5th Amendment, are going unchallenged in any real measure in these four state's courts. The exception is herein the Massachusetts courts with the 16-year organized homeowner actions in the Commonwealth of Massachusetts. The cases must come up from this state it appears.

As this is one of the recognized most important areas of rights, and explicitly recognized as one of the "last vestiges of slavery" that the 14th Amendment was

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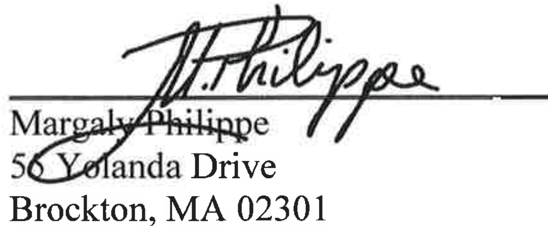
between Whites, Blacks and Hispanics. Washington, D.C: Pew Research Center; 2011. Jul 26

passed to champion and finally achieve, the preservation of a full lower court record in 5 exemplary cases, (and, hopefully, a couple more added with the 60 day extension) is an opportunity for the adjudication of justice that is a unique opportunity for this Court in preserving this joint petition. This court's consideration could uniquely preserve these endangered rights and for the first time in our history, ensure them equally for all.

Respectfully submitted,



Margaly Philippe
56 Yolanda Drive
Brockton, MA 02301

Date: November 4, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished via Process Server to: Nelson Mullins Riley & Scarborough this 4th day of November, 2024:

Plaintiff's Counsel

Kevin P. Polansky (BBO#667229)
kevin.polansky@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
One Financial Center, 3500
Boston, MA 02111
(617) 217-4700
(617) 217-4710 (fax)

Margaly Philippe, *pro se*
55 Yolanda Drive
Brockton, MA 02301
Maggie02325@gmail.com

Date: 11/04/2024

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-P-727

MARGALY PHILIPPE

vs.

WELLS FARGO BANK, N.A., trustee.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This appeal is the most recent chapter in an ongoing effort by the plaintiff, Margaly Philippe, to retain her former home after a Housing Court judgment entered awarding possession of the home to the defendant, a foreclosing bank. The Housing Court judgment was affirmed on appeal, see Wells Fargo Bank, N.A. v. Philippe, 98 Mass. App. Ct. 1117 (2020) (Philippe I). Further appellate review was denied. See Wells Fargo Bank, N.A. v. Philippe, 486 Mass. 1113 (2021). An execution on the judgment issued, and Philippe's requests for relief from that execution were denied in the Housing Court.

Philippe then filed a "petition" in the Superior Court seeking relief from the Housing Court judgment, in equity and

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[1] For Option One Mortgage Loan Trust 2007-FXD1.

pursuant to Mass. R. Civ. P. 60 (b) (4), 365 Mass. 828 (1974). On October 25, 2021, a judge of the Superior Court denied Philippe's petition by entering an order on the docket, and on November 16, 2021, also by docket order, the judge allowed a motion by the bank to close the case. Later, in a written memorandum, the judge allowed the bank's motions to strike a return of service of the petition and permanently close the case. On April 21, 2022, a judgment of dismissal entered pursuant to Mass. R. Civ. P. 54, as amended, 382 Mass. 829 (1981), and Mass. R. Civ. P. 58, as amended, 371 Mass. 908 (1977). The judge cited two reasons: (1) failure of service of the petition, and (2) the Housing Court judgment could not be collaterally attacked in the Superior Court.

Within ten days, Philippe filed a motion for relief from the judgment citing Mass. R. Civ. P. 60 (b) (1) (rule 60 [b] motion), in which she argued that the judge made a mistake when he struck the return of service. The rule 60 (b) motion was denied on June 30, 2022, and Philippe appealed.[2]

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[2] In addition to the April 21, 2022 judgment of dismissal and June 30, 2022 order denying the rule 60 (b) motion, Philippe's renewed and combined notice of appeal identified the orders dated October 25 and November 16, 2021, but those were not "judgments" within the meaning of our procedural rules and are not separately appealable. See Jones v. Boykan, 74 Mass. App. Ct. 213, 218 & n.9 (2009).

In the appeal, Philippe requested a stay of levy on the Housing Court execution pursuant to Mass. R. A. P. 6 (a), as appearing in 481 Mass. 1608 (2019). On September 22, 2022, Philippe's request was denied by a single justice of this court. Philippe again appealed, and her appeals were consolidated for our consideration.

We have carefully considered Philippe's submissions, the April 21, 2022 judgment of dismissal, the June 30, 2022 order denying the rule 60 (b) motion, and the September 22, 2022 single justice order denying the motion to stay. We affirm.

Discussion. Philippe filed her Superior Court petition on October 8, 2021. According to a return of service filed in February 2022, the bank's designated agent was served with a summons and copy of the petition on November 29, 2021. This was after the judge denied the petition (on October 25, 2021) and allowed the bank's motion to close the case (on November 16, 2021), but within the ninety-day window for serving a summons and complaint. See Mass. R. Civ. P. 4 (j), as appearing in 402 Mass. 1401 (1988). The bank maintained that the petition was not a "complaint" within the meaning of Mass. R. Civ. P. 4, as amended, 402 Mass. 1401 (1988) (rule 4), therefore, the return of service was a nullity and should be struck. The judge agreed that "this Court never accepted the Petition," and he struck the

return both for that reason and because the "summons is not accompanied by any complaint as required by [rule] 4."

The challenge for Philippe here, as the Superior Court judge explained, is that she "cannot prevail in her quest to collaterally attack the final judgment of the Housing Court." Because the Housing Court judgment cannot be undone by the Superior Court or by us for reasons we will explain, we need not decide whether the judge mistakenly focused on the title of Philippe's pleading rather than its substance as she contends. Nor must we determine whether her service sufficed under rule 4 even though a return was not filed until February 2022. See Mass. R. Civ. P. 4 (f), 365 Mass. 733 (1974) ("Failure to make proof of service does not affect the validity of the service").

"It is well established as a general matter that denial of a motion under rule 60 (b) will be set aside only on a clear showing of an abuse of discretion." Wang v. Niakaros, 67 Mass. App. Ct. 166, 169 (2006). Applying that standard, we conclude that the judge properly rejected Philippe's contentions that title challenges are outside the jurisdiction of the Housing Court in a summary process proceeding and that only the Superior Court has jurisdiction over equal protection claims under G. L. c. 93, §§ 102 (b), 103 (b).

Both title challenges in a summary process action -- including those based on predatory lending and discrimination --

and "housing problems" that give rise to an equal rights violation fall squarely within the jurisdiction of the Housing Court. G. L. c. 185C, § 3. See G. L. c. 151B, § 9; G. L. c. 183C, § 18 (a)-(b). See also Bank of Am., N.A. v. Rosa, 466 Mass. 613, 625-626 (2013) (Housing Court has jurisdiction in summary process proceeding to consider all equitable challenges to title, including those that previously had to be raised by independent Superior Court action). Philippe raised claims for both predatory lending and discrimination before the Housing Court judge. The Housing Court judge rejected the claims because Philippe "was unable to articulate how her mortgage loan fell within any of the four indices of predation" and she admitted she could not afford her modified loan. After reviewing the evidence and arguments afresh, a panel of this court concluded that the Housing Court judge was correct. Philippe I. Philippe then sought further review of those decisions and it was denied.

Philippe's new action in the Superior Court (the one currently before us) was between the same parties, arose out of the same foreclosure, and asserted the same claims as those raised in the Housing Court (along with new claims that could or should have been raised before). The Superior Court judge correctly decided that Philippe's new action was barred by claim preclusion. That doctrine "makes a valid, final judgment

conclusive on the parties and their privies, and prevents relitigation of all matters that were or could have been adjudicated in the action," "based on the idea that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit" (citations omitted). Laramie v. Philip Morris USA Inc., 488 Mass. 399, 405 (2021).

In Philippe I, Philippe had every opportunity and incentive to pursue all claims that would have called into question the bank's title and therefore its right to possession, including claims for equal rights violations and those based on the ruling in Adjartey v. Central Div. of the Hous. Court Dep't, 481 Mass. 830 (2019). She did not pursue those claims. Considerations of fairness and the requirements of efficient judicial administration dictate that she not be given a second bite at the apple. Laramie, 488 Mass. at 405.

For all these reasons, the single justice correctly discerned that Philippe "failed to demonstrate any likelihood of success on the merits that would result in the reversal of the Housing Court's judgment for possession." Denial of the requested stay was not an abuse of discretion. Cartledge v. Evans, 67 Mass. App. Ct. 577, 578 (2006). This is especially true where the appeal was from a judgment of the Superior Court, while the execution Philippe asked the single justice to stay was issued by the Housing Court. Litigants cannot avoid the

binding effect of a valid and final judgment rendered by a court of competent jurisdiction "by seeking an alternative remedy or by raising the claim from a different posture or in a different procedural form." Wright Mach. Corp. v. Seaman-Andwall Corp., 364 Mass. 683, 688 (1974).[3]

April 21, 2022 judgment of dismissal affirmed.

June 30, 2022 order denying rule 60 (b) motion affirmed.

September 22, 2022 single justice order affirmed.

By the Court (Meade, Hershfang & D'Angelo, JJ.[4]),

Assistant Clerk

Entered: January 3, 2024.

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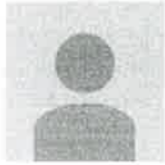
[3] Other contentions by Philippe have not been overlooked; we find nothing in them that requires discussion. Department of Revenue v. Ryan R., 62 Mass. App. Ct. 380, 389 (2004). Philippe's motion to schedule oral argument is denied.

[4] The panelists are listed in order of seniority.

FAR-29662 - Notice: FAR denied



SJC Full Court Clerk <SJCCommClerk@sjc.state.ma.us> Fri, Apr 19, 1:11 PM

Supreme Judicial Court for the Commonwealth of Massachusetts

Telephone

RE: Docket No. FAR-29662

MARGALY PHILIPPE
vs.
WELLS FARGO BANK, N.A., trustee

Plymouth Superior (Brockton) No. 2022-J-0054; 2183CV00821
A.C. No. 2022-P-0727

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on April 18, 2024, the application for further appellate review was denied.

Very truly yours,
The Clerk's Office

Dated: April 19, 2024

To: Margaly Philippe
Kevin Polansky, Esquire
Peter M. Ayers, Esquire