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SJC-13964

ROBERT GAMBEE vs. WELLS FARGO BANK, N.A., & another.[1]

October 29, 2026.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Robert Gambee, appeals from a judgment of the county court denying his petition for relief under G. L. c. 211, § 3. We affirm.

This matter arises from the foreclosure of Gambee's Nantucket residence in 2010. Beginning in 2013, Gambee commenced the first of five separate lawsuits challenging the foreclosure. Each one has been unsuccessful. Among these was a 2016 action in the Land Court. Seven years after that matter was dismissed, Gambee filed a motion for relief from judgment pursuant to Mass. R. Civ. P. 60 (b) (6), 365 Mass. 828 (1974). In support of the motion, Gambee asserted that he had since obtained proof that the foreclosure had been conducted by a bank that never received any ownership interest in the home, an allegation that he characterized as newly discovered evidence. He further argued that this evidence established that one or both of the defendants in that matter (who are the respondents in the present action) had engaged in fraud. A judge in the Land Court denied the motion as untimely, observing that Gambee was seeking relief based on information he claimed to have obtained six years prior to filing the motion. On March 13, 2025, Gambee filed a complaint in the Superior Court based upon the same factual assertions that had served as the basis for the aforementioned motion. The Superior Court dismissed the complaint under the doctrine of res judicata. The court also

[1] HSBC BANK USA, N.A., as trustee for MLMI 2006-AF2.

granted the defendants' request for entry of an order prohibiting Gambee from filing any additional complaints in the Superior Court without authorization from the regional administrative justice. Gambee subsequently filed a motion requesting leave to file a motion to vacate the Superior Court judgment, citing rule 60 (b) (6). That motion was denied. On May 19, 2026, Gambee filed the instant petition seeking relief from the aforementioned Superior Court orders. A single justice of this court denied the petition without a hearing, and this appeal followed.

Gambee has submitted a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner seeking relief from an interlocutory ruling of the trial court to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." Because Gambee principally contests the dismissal of his civil action by the Superior Court, rule 2:21 does not technically apply. See Spencer v. Beacon Hill Hotel, 448 Mass. 1017, 1017 (2007); Gianopoulos v. Clerk-Magistrate of the Attleboro Div. of the Dist. Court Dep't, 446 Mass. 1002, 1003 (2006). Regardless of the applicability of the rule, however, Gambee is not entitled to relief under G. L. c. 211, § 3, unless he can establish the absence of an adequate alternative remedy. See Darby v. Commonwealth, 494 Mass. 1023, 1023 (2024). Gambee cannot do so here.

In his memorandum, Gambee argues that a direct appeal from the dismissal of his complaint does not provide an adequate alternative remedy because the "correct vehicle" for adjudicating his claim is a motion for relief from judgment under rule 60 (b) (6). As indicated, he filed one such motion in the Land Court and sought leave to do the same in the Superior Court, based on his assertions about fraud and newly discovered evidence. Both motions were denied, and Gambee did not appeal. "The fact that the petitioner failed to pursue [an] alternative route or pursued it unsuccessfully does not create a right to relief under G. L. c. 211, § 3" (quotation and citation omitted). Tavares v. Commonwealth, 481 Mass. 1044, 1045 (2019). Because Gambee could have sought appellate relief in the ordinary course, the single justice did not commit an error of law or abuse his discretion by denying extraordinary relief under G. L. c. 211, § 3. See Matter of an Impounded Case (No. 4), 497 Mass. 1036, 1038 (2026) (affirming denial of petition under G. L. c. 211, § 3, where petitioner could have appealed judgment in ordinary course, as well as denial of rule 60

motion). See also Cooper v. CVS Pharmacy, 450 Mass. 1024, 1025 (2008) (petitioner seeking relief from Superior Court order prohibiting him from filing claims without approval of regional administrative justice failed to demonstrate absence of adequate alternative remedies).

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Robert Gambee, pro se.