

NOTICE: Summary decisions issued by the Appeals Court pursuant to its 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 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

19-P-286

FEDERAL NATIONAL MORTGAGE ASSOCIATION

vs.

DEBRA M. BROWN.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Debra M. Brown (borrower), appeals from the orders denying her motions in the Housing Court to vacate a judgment pursuant to Mass. R. Civ. P. 60 (b) (4), 365 Mass. 828 (1974), and to stay execution. Concluding that the borrower has failed to show that the Housing Court judgment was void or to demonstrate error in the form of the execution, we affirm.

1. Motion to vacate judgment. A party may move for relief from a judgment on the ground that "the judgment is void." Mass. R. Civ. P. 60 (b) (4).¹ "[W]e review de novo the denial of a rule 60 (b) (4) motion." Dumas v. Tenacity Constr. Inc., 95 Mass. App. Ct. 111, 114 (2019).²

¹ Rule 60 applies here. See Rule 11(b) of the Uniform Summary Process Rules (1980).

² Contrary to the claim of the plaintiff, the denial of a rule 60 motion is not interlocutory and may be appealed immediately. See Boston Redev. Auth. v. Charles River Park "C" Co., 402 Mass.

The borrower argues that a Land Court judgment issued in 2009 pursuant to the Massachusetts Soldiers' and Sailors' Civil Relief Act in favor of BAC Home Loans Servicing, L.P. (not the plaintiff here) and against the borrower is void under HSBC Bank USA, N.A. v. Matt, 464 Mass. 193 (2013). Even if we assume the dubious proposition that this judgment was void, the borrower provides no argument that the Housing Court judgment in favor of plaintiff Federal National Mortgage Association was void, except for her oft-repeated conclusory claim that "all that followed the void judgment is a nullity." To the contrary, "a servicemember proceeding is neither a part of nor necessary to the foreclosure process; it simply ensures that a foreclosure will not be rendered invalid for failure to provide the protections of the [Federal Servicemembers Civil Relief Act] to anyone so entitled, an assurance that also could be obtained at a postforeclosure action to quiet title under G. L. c. 240, § 6." Matt, supra at 197.³

Furthermore, none of the several courts that adjudicated the borrower's rights have relied on the Land Court judgment. The Housing Court decision in 2015, our decision in 2017, and the decision of the United States Court of Appeals for the First

1004, 1005 (1988). The grant of a rule 60 motion, by contrast, generally is interlocutory. See McDonnell v. McDonnell, 39 Mass. App. Ct. 932, 933 (1995).

³ The borrower concedes that she was not a servicemember.

Circuit do not mention the Land Court at all. The decision of the United States District Court for the District of Massachusetts mentions the Land Court solely to reject the borrower's argument that Bank of America filed a false affidavit in that action; it did not rely on the Land Court judgment in reaching its decision. Accordingly, as the Housing Court judgment was not void, the judge properly denied the borrower's motion to vacate.⁴

2. Execution. The borrower's challenge to the execution's inclusion of other occupants (specifically, her daughter) does not appear to be properly before us. The borrower did not appeal the July 27, 2018, order extending the execution to other occupants. See Mass. R. A. P. 3 (c), as appearing in 430 Mass. 1602 (1999) ("The notice of appeal shall specify the party or parties taking the appeal and shall, in civil cases, designate the judgment, decree, adjudication, order, or part thereof appealed from").⁵ The borrower's motion to stay did not raise this issue.

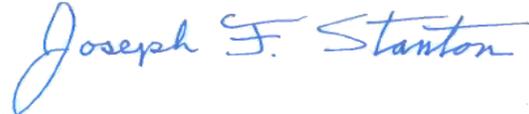
⁴ We reject the borrower's claim that the recording of the Land Court judgment in the registry of deeds constituted a binding admission that any future summary process proceedings would be void if that judgment was void. "[T]here is nothing magical in the act of recording an instrument with the registry that vests an otherwise meaningless document with legal effect." Bevilacqua v. Rodriguez, 460 Mass. 762, 771 (2011).

⁵ We cite to the Massachusetts Rules of Appellate Procedure in effect during the relevant time period. The rules were wholly revised, effective March 1, 2019. See Reporter's Notes to Rule

In any event, Housing Court Administrative Regulation no. 1-17(1) (2017) permits an execution against other occupants who, as here, "are members of the defendant's immediate family (spouse, children, or other familial relation)." The borrower's conclusory statement that the regulation is unconstitutional without any argument, identification of the relevant constitutional provision, or even identification of which constitution the regulation purportedly violates does not rise to the level of appellate argument. See Butler v. Turco, 93 Mass. App. Ct. 80, 89 (2018).⁶

Orders entered August 17,
2018, affirmed.

By the Court (Kinder, Henry &
Ditkoff, JJ.⁷),



Clerk

Entered: February 11, 2020.

1, Mass. Ann. Laws Court Rules, Rules of Appellate Procedure, at 446 (LexisNexis 2019). The substantive requirements of rule 3 (c), at issue in this case, are unchanged. See Mass. R. A. P. 3 (c) (1), as amended, 481 Mass. 1604 (2019).

⁶ The borrower's request for attorney's fees is, of course, denied.

⁷ The panelists are listed in order of seniority.