

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

19-P-1100

HEEWON LEE

vs.

BANK OF AMERICA, N.A.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, Heewon Lee, brought this action in Superior Court in 2017, challenging the actions of the defendant BAC Home Loans Servicing, LP (BAC), in connection with Lee's efforts to obtain a modification of a loan held by the Bank of America, N.A., for which BAC was the servicer. Lee alleged that BAC, in the course of considering Lee's application for a loan modification, had violated various State and Federal laws. On BAC's motion, a judge dismissed Lee's amended complaint in 2018 for failure to state a claim on which relief could be granted, and a judgment of dismissal entered.

¹ Bank of America, N.A., filed the only appellee brief in this case. Bank of America, N.A., describes itself as the successor by merger to BAC Home Loans Servicing, LP, the entity named as the defendant in the plaintiff's complaint.

On June 11, 2018, Lee filed a notice of appeal. He also filed a variety of postjudgment motions, including motions for reconsideration and for relief from judgment, which were ultimately denied. In the meantime, in February of 2019, BAC moved to dismiss Lee's appeal for failure to prosecute. The motion was initially denied, but Lee was warned that he needed to take certain steps to move his appeal forward. Lee then filed four motions: one motion assertedly seeking clarification of his obligations as appellant, two motions to enlarge the time for taking the necessary steps to prosecute the appeal, and one motion to reconsider the dismissal of his amended complaint. On May 29, 2019, another judge denied all four motions and ordered the dismissal of the appeal Lee had taken on June 11, 2018.

On June 25, 2019, Lee filed a notice of appeal from the May 29, 2019, order.² It is the propriety of that order that is

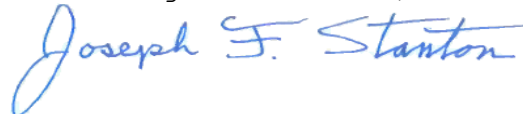
² The notice of appeal also referred to, and apparently sought to appeal, a June 11, 2018, order denying one of Lee's motions for relief from judgment. Because the notice of appeal was filed more than thirty days (indeed, more than one year) after the entry of the June 11, 2018, order, it was untimely as to that order and thus did not bring the order before us for review. See Mass. R. A. P. 4 (a) (1), as appearing in 481 Mass. 1606 (2019) (notice of appeal must ordinarily be filed within thirty days of judgment or order sought to be appealed). Further, the notice of appeal recited that Lee had, on June 12, 2019, filed a notice of appeal from an order denying another of Lee's motions for relief from judgment. That order had been entered on March 18, 2019, more than thirty days earlier, and accordingly the June 12, 2019, notice of appeal was rejected for filing as untimely. Lee does not challenge that action in this appeal.

before us. Lee's brief on appeal, however, makes no argument as to how that order was based on an abuse of discretion or other error of law. Indeed, so far as we can discern, Lee's brief contains (on pages 22-23) only a single, short reference to that order. Lee's brief instead argues the propriety of other actions, such as the underlying dismissal of his amended complaint, the merits of which are not before us.

"The appellate court need not pass upon questions or issues not argued in the brief." Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1629 (2019). See Maroney v. Planning Bd. of Haverhill, 97 Mass. App. Ct. 678, 683 n.8 (2020) (claims not adequately argued on appeal are waived). Here, because Lee has not argued that the May 29, 2019, order was erroneous in any respect, he has furnished us with no basis on which to disturb it.

Order dated May 29, 2019,
affirmed.

By the Court (Rubin,
Wolohojian & Sacks, JJ.³),



Clerk

Entered: October 23, 2020.

³ The panelists are listed in order of seniority.