

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

21-P-555

FERAHNAZ KAHYAOGU

vs.

STEPHEN SILLARI & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This is an appeal by the pro se plaintiff, Dr. Ferahnaz Kahyaoglu, from a judgment of the Land Court dismissing her complaint challenging conveyances of a building she has lived in since 2012. The defendants are (1) Omar Sayied (Omar), who was conveyed the property by his father, Dr. Abul Sayied (Dr. Sayied); (2) Stephen Sillari; and (3) Sillari Enterprises, LLC (SEL), which purchased the property from Omar.²

Sometime in 2012, Dr. Kahyaoglu moved into the downstairs apartment of Dr. Sayied's home located at 88 Holworthy Street in Cambridge. Dr. Kahyaoglu concedes that she did not pay rent or have a written lease. Instead, she claims that over the years

¹ Sillari Enterprises, LLC and Omar Sayied.

she served as a personal care attendant for Dr. Sayied and performed physical labor and spent her own money to improve the value of the property. And that in exchange for her services and expenses, Dr. Sayied promised to give her ownership of her apartment in his will or its monetary equivalent. She further claims that Dr. Sayied showed her a copy of his will setting out this arrangement. However, in August 2019, when Dr. Sayied was in poor health, his son Omar returned home to care for him. Dr. Sayied subsequently transferred ownership of 88 Holworthy to Omar, eluding his alleged arrangement with Dr. Kahyaoglu.

Omar then decided to sell the property. He commenced an action in the Cambridge District Court to enjoin Dr. Kahyaoglu from preventing an examination of the smoke detectors, a prerequisite to finalizing the sale of the home. Dr. Kahyaoglu filed numerous counterclaims, asserting that Dr. Sayied promised to give her ownership of the apartment in exchange for her services and expenses, and that Omar improperly interfered with this arrangement. In August 2019, Dr. Kahyaoglu filed an action in the Federal District Court again asserting her entitlement to the property and alleging fraud in its transfer.³ Omar ultimately finalized the sale of the property to SEL, and

³ The Federal District Court judge granted the defendant's motion to dismiss, but allowed Dr. Kahyaoglu to file an amended complaint.

Dr. Sayied passed away shortly thereafter at the age of eighty-six.

SEL filed a summary process action in the Eastern Division of the Housing Court Department against Dr. Kahyaoglu in February 2020. Dr. Kahyaoglu filed counterclaims and then, months later, a suit of her own in the same court seeking a temporary restraining order to cancel the sale. She then filed the present matter in the Land Court in January 2021, ostensibly claiming, just as she had in Federal court and in the Cambridge District Court, that Dr. Sayied had executed a will promising her the apartment and that all other conveyances were unlawful.

Discussion. The Land Court judge allowed the defendants' motions to dismiss under Mass. R. Civ. P. 8 (a), 365 Mass. 749 (1974); Mass. R. Civ. P. 12 (b) (6), 365 Mass. 749 (1974); and Mass. R. Civ. P. 12 (b) (9), as amended, 450 Mass. 1403 (2008).

An appellate court reviews the allowance of a motion to dismiss de novo and accepts as true the facts alleged in the plaintiff's complaint as well as all reasonable inferences drawn therefrom. Buffalo-Water 1, LLC v. Fidelity Real Estate Co., LLC, 481 Mass. 13, 17 (2018). We begin by noting, as did the Land Court judge, that pro se litigants are given some leniency in determining compliance with the rules of civil procedure. Mmoe v. Commonwealth, 393 Mass. 617, 620 (1985). However, "[t]he right of self-representation is not a license to evade

the rules of procedure" (quotation omitted). International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 847 (1983), quoting Faretta v. California, 422 U.S. 806, 834-835 n.46 (1975).

First, Dr. Kahyaoglu's complaint fails to comply with rule 8 (a) (1), which requires the pleading set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Having carefully reviewed Dr. Kahyaoglu's forty-one page complaint, we agree with the judge that the statements therein are neither short nor plain. The most that can be gleaned from it is that Dr. Kahyaoglu feels mistreated and unappreciated by Omar and SEL. The sometimes rambling pages detailing her care of Dr. Sayied are certainly confusing and do not show entitlement to relief as required by rule 8 (a) (1).

Dr. Kahyaoglu's complaint also fails to state a claim for relief under rule 12 (b) (6). Factual allegations are sufficient to survive a motion to dismiss under this rule if they "'plausibly suggest[] (not merely [be] consistent with)' an entitlement to relief." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). A complaint does not need to contain "detailed factual allegations," but it must offer more than "labels and conclusions." Iannacchino, supra, quoting Twombly, supra at 555. The factual allegations must "raise a right to relief above the speculative level . . . [based] on the

assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id.

Even if this Court were to accept that Dr. Kahyaoglu's complaint alleges a deprivation of her property ownership that meets the requirements of rule 8 (a) (1), this claim cannot stand under the rule 12 (b) (6) standard. That is because prior to his death, Dr. Sayied could convey his property to anyone he wished. If in fact a will exists as Dr. Kahyaoglu has asserted, it did not bind Dr. Sayied, the testator, from conveying his property prior to his death. Simply stated, Dr. Sayied was free to convey his property to his son prior to his death, or anyone else for that matter, regardless of whether he executed a will. See Poulos v. Poulos, 100 Mass. App. Ct. 40, 44 (2021). The averments in Dr. Kahyaoglu's complaint, therefore, do not give rise to a viable cause of action.

Next, to the extent that Dr. Kahyaoglu claims that Omar exercised undue influence over Dr. Sayied in the conveyance of the property, she lacks standing to do so. Even accepting her allegation of undue influence by Omar as true, such a claim survives the testator's death and empowers only the representative of their estate to bring suit. See Cambridge St. Realty, LLC v. Stewart, 481 Mass 121, 128-129 (2018); Fisher v. Fisher, 99 Mass. App. Ct. 1132 (2021). See also Enos v. Secretary of Env'tl. Affairs, 432 Mass. 132, 135 (2000). Since

it is undisputed that Dr. Kahyaoglu is not the representative of the estate of Dr. Sayied, this claim must fail.

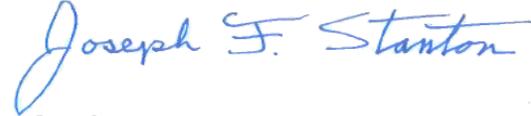
We likewise conclude, as did the Land Court judge, that where there were pending actions between the same parties at the time of the judge's ruling, the case was subject to dismissal. "Rule 12 (b) (9) provides for the dismissal of a second action in which the parties and the issues are the same as those in a prior action still pending in a court of the Commonwealth." M.J. Flaherty Co. v. United States Fid. & Guar. Co., 61 Mass. App. Ct. 337, 339 (2004). The purpose of this rule is to ensure that claim splitting does not occur. Lyons v. Duncan, 81 Mass. App. Ct. 766, 771 (2012). The earlier actions in the Housing Court filed by Dr. Kahyaoglu seeking equitable relief, and the summary process action filed by SEL with counterclaims asserted by Dr. Kahyaoglu involved the same parties and substantially similar claims and facts. All of her claims in this action were or could have been raised in those actions. There was no error in allowing the motion to dismiss under rule 12 (b) (9).

As the complaint relates to Stephen Sillari, who is named as an individual, we agree with the Land Court judge that Dr. Kahyaoglu has failed to provide any allegations that would

support a claim against him personally within the jurisdiction of the court.⁴

Judgment affirmed.

By the Court (Desmond,
Ditkoff & Walsh, JJ.⁵),



Clerk

Entered: June 22, 2022.

⁴ The appellees' motions for attorney's fees and costs are denied.

⁵ The panelists are listed in order of seniority.