

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO: AP-09-001

JAW - CUM 1/6/2009

AP-09-001-6 P. 30

JAMES PAPI

v.

ORDER OF DISMISSAL OF APPEAL

MARTIAN BURTIC, et al

This is before the court on the appellant's motion to annul the writ of possession, which this court will treat as a request to stay the issuance of a writ of possession pursuant to M.R.Civ.P. 80D(j).

Burtic appeals from a Forcible, Entry and Detainer Judgment entered by the District Court on December 8, 2008. Following entry of judgment, a writ of possession was issued on December 15, 2008 and served on Burtic on December 19, 2008. Burtic filed his notice of appeal also on December 15, 2008 requesting a jury trial de novo. He alleged in his Notice of Appeal, "I have my house foreclosed on false pretenses of default. The foreclosure was awarded by summary judgment without hearing. The first hearing I had at the time of the eviction trial." (*sic*) Burtic also filed on December 22, 2008 a motion to annul the writ of possession. Burtic alleged in his motion to annul that "[t]he summary judgment of foreclosure on my house was awarded on false pretenses" and that he has paid certain monthly mortgage payments in 2005 and 2006 to Washington Mutual Home Loans contrary to plaintiff's allegation that he has failed to make monthly mortgage payments.

The Superior Court may grant a stay if it finds that "the defendant's grounds of appeal present a genuine issue of material fact or law." M.R.Civ.P. 80D(j)(2). This court

finds that Burtic's appeal does not present a genuine issue of material fact or law for the following reasons.

First, this is an appeal from a judgment entered in a forcible entry and detainer action, granting possession of premises to the landlord. Forcible entry and detainer actions require a landlord-tenant relationship established either because of a written lease or some other circumstances giving rise to a rental agreement. See 14 M.R.S.A. § 6001 *et seq.* Contrary to Burtic's allegations in his notice of appeal and motion to annul, this is an appeal from a forcible entry and detainer and not an appeal from a foreclosure judgment.

Second, the foreclosure of Burtic's property occurred in another court action filed in the Superior Court, *Key Bank National Association v. Martian Burtic*, Docket No. Cum-06-579, and affirmed by the Supreme Judicial Court of Maine, Mem-07-174 (Nov. 6, 2007). Having lost his appeal of the foreclosure action, Burtic does not get another bite at the apple.

Third, the premises were transferred by a foreclosure deed to James Papi and Bernadette Papi following the judgment of foreclosure and a public foreclosure sale. Consequently, possession of the premises had been transferred to Papi and Burtic was a tenant of Papi's at the time of the forcible entry and detainer action.

The only issue that Burtic has raised on the appeal is the matter of the foreclosure and whether Burtic made his monthly mortgage payments. Burtic does not raise any factual or legal issue on appeal relating to the landlord-tenant relationship; therefore, the motion to annul the writ of possession is denied.

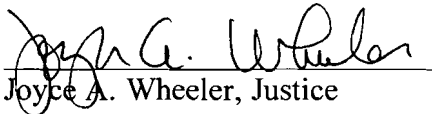
Having found that Burtic has failed to raise any genuine issue of material fact or law, the court on its own action dismisses the appeal. Burtic failed to comply with the requirements of M.R.Civ.P. 80D(f)(2)(A) and failed to show there is any genuine issue of material fact as to which there is a right to trial by jury; therefore, Burtic waived the right to a jury trial and the appeal, to the extent based on this ground, is dismissed. Burtic has also failed to establish that his appeal presents any genuine issues of law. See M.R.Civ.P. 80D(f)(1).

Accordingly, the appeal is dismissed and the District Court's order of December 8, 2008 that a writ is to issue remains in full force and effect as well as the writ issued on December 15, 2008 and served on Burtic on December 19, 2008.

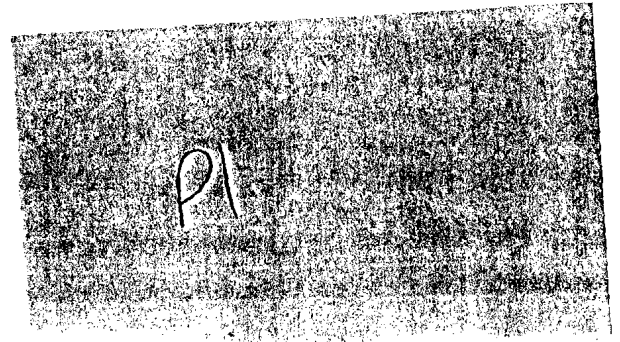
The entry is:

Motion to annul writ is denied. Appeal dismissed.

Date: January 6, 2009

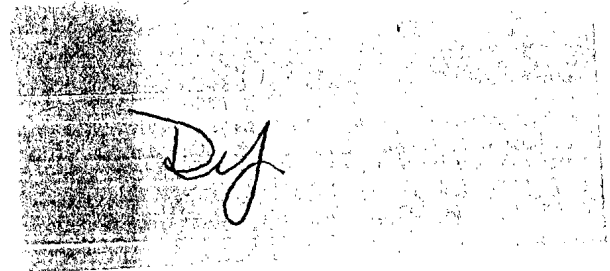

Joyce A. Wheeler, Justice

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