

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

Dated: September 23, 2019

RE: No. 2018-P-1586

Lower Court No: 18H85CV000449

THE COMMUNITY BUILDERS, INC. vs. SASHA CANTU

NOTICE OF DOCKET ENTRY

Please take note that on September 23, 2019, the following entry was made on the docket of the above-referenced case:

ORDER: This is an appeal from the dismissal of an action brought by The Community Builders, Inc. (Community Builders) as managing agent for Plumley Village LLC, doing business as Plumley Village East (Plumley Village), against the tenant, Sasha Cantu, seeking an order to set a date to vacate the premises leased by Plumley Village to Cantu. Cantu having vacated the apartment, we may dismiss the appeal as moot. See *Knott v. Laythe*, 40 Mass. App. Ct. 911, 911 (1996); *Brown v. Sewell*, 14 Mass. App. Ct. 970, 970 (1982).

Community Builders nevertheless urges us to decide this case, and in particular the standing issue decided by the motion judge, because the issue presented is one which is capable of repetition yet evading review. See *Lowell Hous. Auth. v. Melendez*, 449 Mass. 34, 35 (2007); *Lawrence v. Osuagwu*, 57 Mass. App. Ct. 60, 63 n.5 (2003). However, Community Builders has not advanced any argument on appeal regarding the second ground for dismissal relied upon by the judge, namely that Community Builders was required to bring a summary process action in order to have its claim to timely possession heard.[1] See *Attorney Gen. v. Dime Sav. Bank of N.Y., FSB*, 413 Mass. 284, 290 n.10 (1992), quoting *Glickman v. Kastel*, 323 Mass. 148, 150 (1948) ("There is not, and has never been, any equity in the bill' requesting an injunction to recover possession of land"); *G. L. c. 184, s. 18* ("No person shall attempt to recover possession of land or tenements in any manner other than through an action brought pursuant to chapter two hundred and thirty-nine or such other proceedings authorized by law"). Community Builders has therefore waived appellate review of this aspect of the judge's ruling. See *Abate v. Freemont Inv. & Loan*, 470 Mass. 821, 833 (2015); *Chang v. Winklevoss*, 95 Mass. App. Ct. 202, 204 n.5 (2019); *Mass. R. A. P. 16 (a) (9) (A)*, as appearing in 481 Mass. 1628 (2019). Accordingly, we decline to exercise our discretion to hear this appeal on its merits, and dismiss this appeal as moot. Appeal dismissed. (Vuono, Meade, Sullivan, JJ.[2]). *Notice/Attest/ Horan, J

Footnotes:

[1] Community Builders conceded at oral argument that it brought a breach of contract action, not a summary process action.

[2] The panelists are listed in order of seniority.