COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-748

ANTHONY Z. BONO & another[1]

vs.

UNKNOWN DEFENDANTS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiffs, Anthony Z. Bono and Joachim Carlos Santos Martillo, appeal from the judgment dismissing their complaint. According to the docket entries in the trial court, on October 12, 2018, the plaintiffs filed a complaint in the Superior Court. We note that the plaintiffs have not provided us with a copy of the complaint. The docket further indicates that a few days later, on October 19, 2018, a show-cause order as to why the case should not be dismissed issued. The plaintiffs responded to the show-cause order and, on November 19, 2018, they filed a "bill in equity." This document has not been provided to us either. Another show-cause order issued and a judge of the Superior Court conducted a hearing on December 17, 2018. At the conclusion of that hearing, the judge expressed

[1] Joachim Carlos Santos Martillo.

his intention to dismiss this case for a variety of reasons, which he stated on the record. The hearing transcript has not been provided to us; however, the judge issued a written decision, in which he briefly memorialized some of those reasons.

The judge reasoned that, by their "bill in equity," Bono and Martillo were attempting to:

> "appeal . . . a 2016 decision of the United States District Court for the Eastern District of Virginia, rendered by a jurist labeled by plaintiffs as the 'Federal District Court Judge from Hell.' . . . In that 25-page decision [which also does not seem to be in the present appendix] . . . , the federal district judge reviewed a decision by the United States Patent and Trademark Office rejecting the patent application at issue here. The plaintiff in the federal case was RealVirt LLC, an entity not yet a party to [this] lawsuit, but which the individual plaintiffs seek to add as a co-plaintiff by naming it as such in their Bill in Equity. The federal district judge concluded that the individual plaintiffs in this case had no legal interest in the application for that patent, and therefore their corporate entity RealVirt had failed to establish its standing to challenge the action of the United States Patent and Trademark Office. Much of the substance of the Bill in Equity is a vehement disagreement with that conclusion of the federal district court judge. However, plaintiffs long ago appealed that decision to the United States Court of Appeals for the Federal Circuit, which issued a one-word affirmance in August 2018, less than two months before plaintiffs filed this lawsuit, apparently seeking a second bite at that particular apple."

The judge further explained that the matter could be dismissed on any number of grounds, including: (i) Federal jurisdiction over patent matters is exclusive; (ii) Massachusetts does not recognize a cause of action to "quiet" or "try title" of a

patent application; (iii) it is "unlikely" that Massachusetts has personal jurisdiction over the Director of the United States Patent and Trademark Office; (iv) res judicata and/or collateral estoppel arising from the Federal judgment mentioned in the judge's decisional memorandum; (v) failure to present a "short and plain statement of the claim"; and (vi) failure to state a claim.

To the extent we understand the plaintiffs' arguments, they assert that they stated a claim for adverse possession, or "reversion," of a patent application. However, because the plaintiffs have not provided us with an adequate record, it is not possible for us to determine whether such a claim has been stated or whether we have subject matter jurisdiction.[2] "It is the obligation of the appellant[] to include in the appendix those [materials] which are essential for review of the issues raised on appeal." Shawmut Community Bank, Nat'l Ass'n v. Zagami, 30 Mass. App. Ct. 371, 372-373 (1991), S.C., 411 Mass.

[2] We note that a single justice of this court issued an order on May 21, 2019, requiring the plaintiffs to file "[o]n or before 6/5/19, . . . a memorandum, not to exceed 7 double-spaced pages, showing cause as to why this court has jurisdiction over this matter . . . where the claims at issue apparently seek relief as to the ownership of a patent which is subject to the exclusive jurisdiction of the federal courts."

807 (1992). See Mass. R. A. P. 16 (a) (4), as appearing in 481 Mass. 1628 (2019);[3] Mass. R. A. P. 18, as appearing in 481 Mass. 1637 (2019). Given the state of the record and the briefing, we do not attempt to determine whether the complaint was properly dismissed. Cf. Chokel v. Genzyme Corp., 449 Mass. 272, 280 (2007) (where motion missing from record on appeal "we do not review the propriety of its denial").

Judgment affirmed.

By the Court (Vuono, Lemire & McDonough, JJ.[4]),

Joseph F. Stanton

Clerk

Entered: May 26, 2020.

[3] We cite to the Massachusetts Rules of Appellate Procedure in effect as of the date the Appendix was filed. The rules were wholly revised, effective March 1, 2019. See Reporter's Notes to Rule 1, Mass. Ann. Laws Court Rules, Rules of Appellate Procedure, at 446 (LexisNexis 2019).

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