

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

25-P-1508

PATRICIA RAHN

vs.

DEBORAH HAY.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Deborah Hay, appeals from an order denying the defendant's special motion to dismiss pursuant to G. L. c. 184, § 15 (c).² We affirm.

Background. "We set forth the facts from the verified pleadings and affidavits that were before the judge." Citadel Realty, LLC v. Endeavor Capital N., LLC, 93 Mass. App. Ct. 39, 40 (2018), citing G. L. c. 184, § 15 (c).

¹ Individually and as personal representative of the estate of Richard C. Allen.

² Although the denial of a motion to dismiss is ordinarily not an appealable order, "[a]ny party aggrieved by a ruling under subsection (c) . . . may appeal pursuant to the first or second paragraphs of section 118 of chapter 231." G. L. c. 184, § 15 (d).

Around 1992, the plaintiff entered into a romantic relationship with the decedent, Richard C. Allen. In September 1993, the decedent purchased the property at issue, 5 Grover Street in Salisbury, and the plaintiff and decedent moved into the property together. On June 19, 1995, the plaintiff and the decedent entered into an agreement drafted by the decedent's counsel, which was recorded at the Essex County Registry of Deeds on February 2, 1996.

The agreement stated that title to the property was vested solely in the decedent, but "[d]ue to the fact that Patricia Rahn is unable at the present time to hold joint ownership of said real property,³ the purpose of the Agreement is to provide for her one-half interest in said property." The agreement further states that "it is the intention of the current owner, Richard Allen to share the ownership of said real property equally with Patricia as if her name were affixed to the Title by Deed, as Joint Tenants with the right of survivorship."

The plaintiff and the decedent separated in or around 1997, around which time the plaintiff moved out of the home. On June 8, 2020, the decedent passed away and, on October 16, 2020, the

³ In the plaintiff's opposition to the defendant's motion to dismiss, the plaintiff states that she could not hold actual title to the property without forfeiting her son's disability benefits.

defendant as personal representative of the decedent's estate recorded a deed of distribution in the Essex County Registry of Deeds. In July 2025, an attorney for the defendant contacted the plaintiff to ask her to sign a release in an effort to clear title to the property.

The plaintiff then filed the present action on October 1, 2025, seeking a declaratory judgment that she was the sole owner of the property and a temporary restraining order or preliminary injunction to prevent the defendant from transferring the property. At the same time, the plaintiff filed a motion for a memorandum of lis pendens and a motion for injunctive relief to enjoin any sale or encumbrance of the property.

A hearing was scheduled for October 9, 2025, at which the defendant filed a special motion to dismiss pursuant to G. L. c. 184, § 15 (c), contending that the plaintiff's complaint is frivolous. After the hearing, a judge allowed the lis pendens motion but denied the motion for injunctive relief because the defendant failed to establish a likelihood of success on the merits of her claim. On November 7, 2025, a different judge (motion judge) denied the defendant's special motion to dismiss. This appeal followed.

Discussion. We review a judge's ruling on a special motion to dismiss pursuant to G. L. c. 184, § 15 (c) for abuse of

discretion or error of law. Fariello v. Zhao, 101 Mass. App. Ct. 566, 569-570 (2022). Although "an order predicated solely on documentary evidence permits the appellate court to draw its own conclusions from the record . . . we must exercise special care not to substitute our judgment for that of the trial court where the records disclose reasoned support for its actions." Citadel Realty, LLC, 93 Mass. App. Ct. at 44, quoting Galipault v. Wash Rock Invs., LLC, 65 Mass. App. Ct. 73, 82 (2005).

The court shall grant a special motion to dismiss brought pursuant to G. L. c. 184, § 15 (c) if "the court finds that the action or claim is frivolous." An action is frivolous if "(1) it is devoid of any reasonable factual support; or (2) it is devoid of any arguable basis in law; or (3) the action or claim is subject to dismissal based on a valid legal defense such as the statute of frauds." G. L. c. 184, § 15 (c).

The defendant contends that the plaintiff's action is frivolous because the agreement contained no grant or conveyance language, and the agreement's statement that the plaintiff "is unable at the present time to hold joint ownership of said real property" precludes an interpretation that the agreement granted a property interest to the plaintiff. We disagree.

As the motion judge found, the statements that "the purpose of the Agreement is to provide for her one-half interest in said

property" and "it is the intention of the current owner, Richard Allen to share the ownership of said real property equally with Patricia as if her name were affixed to the Title by Deed" provide an arguable basis in fact and law that the agreement intended to convey a present interest. G. L. c. 184, § 15 (c).

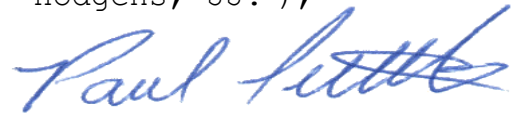
The absence of language of conveyance does not prevent an argument that the agreement did, in fact, convey a present interest. See Kaufman v. Federal Nat'l Bank, 287 Mass. 97, 100-101 (1934) ("where a deed of real estate shows by its language that it was intended to pass title by one form of conveyance, by which however title could not pass, courts have made the deed effective by construing it as a deed of some other form"). Although the agreement's statement that the plaintiff is "unable at the present time to hold joint ownership of said real property" raises a considerable question whether the decedent intended to convey a present interest in the property, "[a] considerable question . . . is not the same thing as a frivolous argument."⁴ Fariello, 101 Mass. App. Ct. at 570.

⁴ Indeed, while concluding that the action was not frivolous, the motion judge "hasten[ed] to add that [he was] not holding that . . . no other reasonable construction of the Agreement, including that advanced by Hay, can be maintained. Nor [was he] concluding that Rahn is likely to ultimately prevail."

Because we agree that the plaintiff's action is not frivolous, the defendant's special motion to dismiss was properly denied. See Fariello, 101 Mass. App. Ct. at 570; G. L. c. 184, § 15 (c).⁵

Order entered November 12,
2025, denying defendant's
special motion to dismiss
affirmed.

By the Court (Desmond, Hand &
Hodgens, JJ.⁶),

A handwritten signature in blue ink that reads "Paul Little". The signature is stylized with a large, flowing "P" and "L".

Clerk

Entered: August 27, 2026.

⁵ The defendant's request for appellate attorney's fees and costs is denied.

⁶ The panelists are listed in order of seniority.