No. 23-CV-271

In the

District of Columbia Court of Appeals

POTOMAC PLACE ASSOCIATES, LLC, *Appellant*

v.

WALTER MENDEZ, *ET AL.*, *Appellees.*

On Appeal from the Superior Court of the District of Columbia Case No. 2019-LTB-022079 (The Honorable Maurice A. Ross)

BRIEF OF APPELLANT POTOMAC PLACE ASSOCIATES, LLC

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March 22, 2024

CERTIFICATE REQUIRED BY RULE 28(A)(2)

Pursuant to D.C. App. R. 28(a)(2), Appellant Potomac Place Associates LLC submits the following Certificate as to Parties and Counsel.

Potomac Place Associates LLC was the plaintiff in Landlord & Tenant Case 2019 LTB 22079, represented by Richard W. Luchs, Esq., Joshua M. Greenberg, Esq., and Spencer B. Ritchie, Esq., of Greenstein DeLorme & Luchs, P.C.

Walter Mendez is one of two co-defendants in Landlord & Tenant Case 2019 LTB 22079, represented by Ramona Quillett, Esq., of the Office of Tenant Advocate. Fernando Castillo is the second co-defendant in Landlord & Tenant Case 2019 LTB 22079. Mr. Castillo proceeded *pro se*.

There are no intervenors or *amici curiae*.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Potomac Place Associates LLC is a District of Columbia limited liability company. It is not owned by a parent corporation and no member of Potomac Place Associates LLC is a publicly held corporation. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Date: March 22, 2024

/s/ Joshua M. Greenberg
Joshua M. Greenberg, Esq.
Counsel for Potomac Place Associates, LLC

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I. STATEMENT THAT THE APPEAL IS FROM A FINAL ORDER OR JUDGMENT

Potomac Place Associates LLC ("Potomac Place") asserts that the instant appeal is taken from a final order that disposes of all parties' claims, thereby establishing this Honorable Court's jurisdiction.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether D.C. Code §42-3401.01 *et seq*. (2001) allows the transfer or extension of a qualified low-income elderly head of household's statutory life tenancy to another member of the household?

B. Whether the Trial Court wrongfully entered summary judgment in favor of Defendants by giving retroactive effect to the Low-Income Disabled Tenant Rental Conversion Protection Amendment Act of 2006?

III. STATEMENT OF THE CASE

On April 12, 2019, Potomac Place issued a 120-Day Notice of Intention to Convert in accordance with the provisions of the Condominium Act, D.C. Code §42-1904.08(b) to the tenants of an apartment that is part of building that converted to condominiums. On July 16, 2019, Potomac Place issued a 30-Day Notice to Vacate to the tenants of the same apartment and which stated a revised and later deadline by when they needed to vacate. The tenants of that apartment (the Defendants below – Walter Mendez and Fernando Castillo) failed to either purchase the apartment or vacate pursuant to a 120-Day Notice of Intention and the 30-Day Notice to Vacate.

On October 3, 2019, Potomac Place filed an action for possession in the Landlord and Tenant Branch of the Superior Court to recover possession of an apartment in a housing accommodation that converted to condominiums in November 2005. *See* JA0001.

On November 19 and 20, 2019, Mr. Mendez and Mr. Castillo filed their respective Answers and Jury Demands. *See id.* The case was certified to the Civil Division pursuant to L&T Rule 6 and assigned to the Honorable Fern Flanagan Saddler. *See id.* A Landlord & Tenant Track Scheduling Order was entered. *See id.*

The case then fell victim to the COVID-19 pandemic and sat idle for an extended period. *See id.* A Status Hearing was held on June 9, 2021, and the Court ordered the parties to confer and submit a modified proposed scheduling order. *See id.* On July 1, 2021, the parties submitted a Dispositive Motion Briefing schedule. *See id.*

On August 3, 2021, Potomac Place filed its Motion for Summary Judgment, which was opposed on September 3, 2021, by Mr. Mendez in an Opposition and Cross-Motion to Dismiss with Prejudice. Potomac Place's Reply was filed on October 3, 2021. *See id.*

On December 31, 2021, the case was transferred to the Honorable Maurice A. Ross and on January 17, 2022, Judge Saddler entered an Order denying the

motions indicating the belief there were disputed material facts preventing granting summary judgment in favor of either party. *See id.; see also* JA 0019

On April 26, 2022, the parties filed a Joint Motion to File Renewed Cross-Motions for Summary Judgment, which Judge Ross granted on May 2, 2022. *See id.*

On May 20, 2022, Potomac Place filed its Renewed Motion for Summary Judgment; on June 24, 2022, Mr. Mendez filed his consolidated Opposition and Cross-Motion to Dismiss; and on June 27, 2022, Potomac Place filed its Reply. *See id.*

Oral arguments on the cross-motions were heard by Judge Ross on September 2, 2022, at the conclusion of which Judge Ross denied Potomac Place's Motion for Summary Judgment. *See* JA 0022. Judge Ross concurrently denied Mr. Mendez's Cross-Motion to Dismiss on the grounds that an opposition was not the proper vehicle to seek affirmative relief. *See id.*

Subsequently, Mr. Mendez filed a Motion for Summary Judgment which was granted by a skeletal written Order dated March 9, 2023, followed later that same day by the entry of an Order of Judgment. *See id.; see also* JA 0040 and JA 0042. The Order granting summary judgment gives no analysis of the issues presented in the briefing by either party. *See id.*

This appeal followed.

IV. STATEMENT OF FACTS

A. THE CONDOMINIUM CONVERSION PROCESS

1. ELIGIBILITY TO CONVERT

In 2005, Potomac Place initiated the process to convert the subject housing accommodation to a condominium regime. The first step in the conversion process for the owner of a tenanted property is to file a request for a tenant election. *See* D.C. Code §42-3402.03(a). Either the housing provider or a duly organized tenant association conducts the conversion election supervised by the District of Columbia.[1] *See* D.C. Code §42-3402.03(c). If over fifty percent of qualified voters (as determined by the Mayor) vote in favor of conversion, the process continues. *See* D.C. Code §42-3402.03(i). The term "qualified voter" is defined in D.C. Code §42-3402.03(d) (2001), and states, as pertinent:

> (d) *Qualified voter*. – A head of household residing in each rental unit of the housing accommodation is qualified to vote. . . unless he or she is a head of household whose continued right to remain a tenant is required by this chapter.

(emphasis added).

[1] At the time of the Conversion Election, administration of the Act fell to the Department of Consumer and Regulatory Affairs' Condominium and Cooperative Conversion and Sales Branch ("CCCSB"). Currently, administration of the Act is under the purview of the Department of Housing and Community Development's Rental Conversion and Sale Division ("RCSD"). To avoid confusion, and where appropriate, the term "DC Condo Agency" shall refer to, as the case may be, CCCSB or RCSD.

The Act recognizes only one head of household for each rental unit and any statutorily protected status ties to that specific, identified, head of household. *See* D.C. Code §42-3402.03(d) (2001)*; see also* D.C. Code §42-3401.03(10) (defining "head of household").

2. REGISTRATION

Once the conversion election results are certified and the conversion is approved, the next step is to register the condominium regime. *See* D.C. Code §42-1904.04. The declarant must submit a Public Offering Statement ("POS") to the DC Condo Agency for its review and approval. *See id.* The POS consists of two parts: (1) a narrative portion; and (2) an exhibit portion. *See* D.C. Code §42-1904.04(a)(4) - (5). The narrative portion is intended to summarize significant features of the condominium and present other information of interest to prospective purchasers. *See id.* The exhibit portion includes legal documents required for the operation of the condominium association (e.g., bylaws). *See id.* Upon the DC Condo Agency's approval of the POS, it issues a Condominium Registration Order, and the owner of the newly established condominium regime may now take sales contracts on individual units. *See* D.C. Code §42-1904.06.

3. RECORDATION

The final step of the condominium conversion process is: (i) recordation of the Condominium Declaration and Bylaw exhibits from the approved POS with the

Recorder of Deeds; (ii) recordation of the Condominium Plat and Plans with the Office of the Surveyor; and (iii) assignment of tax lot numbers to each individual condominium unit and parking unit by the Office of Tax and Revenue. *See* D.C. Code §42-1902.05. After this final step is complete, the owner of the condominium regime may sell the individual units to tenants and the public at large. *See* D.C. Code §42-1904.02(a).

4. SALE OF CONDOMINIUM UNITS

Once these three steps are satisfied, and at the time that the condominium units are offered for sale, the tenants of the newly established condominium regime have the option to purchase their respective dwelling units. *See* D.C. Code §42-1904.08(b). The law provides in pertinent part:

> (1) The declarant shall give each of the tenants...at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate….
>
> (2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant…shall have the exclusive right to contract for the purchase of such apartment unit….
>
> (3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate....

See id. §42-1904.08(b).

The effect of this provision is that if a tenant fails to purchase their dwelling unit, the tenant must vacate the property upon expiration of the valid statutory notice to vacate. This is essential to the function of the statute because the dwelling unit will no longer be a rental unit – it will be sold by the declarant as a condominium unit.

B. FACTUAL BACKGROUND

By lease dated June 1, 2004 (the "Lease"), Walter Mendez ("Mr. Mendez") and his mother, Teresa Aparicio ("Ms. Aparicio"), became tenants of Apartment N720 (the "Apartment") in the multi-family apartment building owned by Potomac Place located at 800 4th Street, S.W. (the "Building"). *See* JA 0043.

In 2005, following negotiations between Potomac Place and the Building's tenant association, Potomac Place began the condominium conversion process.

On November 28, 2005, the Building's tenant association held an election pursuant to D.C. Code §42-3402.03 (2001) (the "Conversion Election") and a majority of qualified tenants voted in favor of converting the Building to condominiums. *See* JA0053. The Conversion Election was conducted and supervised by CCCSB and, on November 30, 2005, CCCSB certified the results of the Conversion Election. *See id.* CCCSB's Conversion Election Results letter identified the ten tenants who qualified as low-income elderly and whose continued right to remain a tenant was required by D.C. Code §42-3402.08(a)

(2001). *See id.* Ms. Aparicio was one of the listed qualified low-income elderly tenants.[2] *See id.* Neither Mr. Mendez nor Mr. Castillo were identified anywhere in CCCSB's Conversion Election Results Letter. *See id.* The "term 'elderly tenant' means a head of household who is 62 years of age or older. The number of elderly tenants qualifying under this section is that number on the day an owner requests a tenant election for purposes of conversion." D.C. Code §42-3402.08(c) (2001) (emphasis added).

The Potomac Place Tower Condominium was registered effective May 10, 2006, recorded promptly thereafter.

Since Ms. Aparicio was a protected low-income elderly tenant, Potomac Place did not and could not at the time issue a 120-Day Notice of Intent to Convert for the Apartment. *See* Mot. for Summ J. (May 23, 2022) at Exhibit 4 (Affidavit of Mr. Russell Hines). Ms. Aparicio's and Mr. Mendez' tenancy continued uninterrupted for the next 13 years until January 23, 2019, when Ms. Aparicio passed away. *See* JA 0052.

[2] Neither Mr. Mendez nor Mr. Castillo were identified anywhere in CCCSB's Conversion Election Results Letter. *See id.* Mr. Castillo did not move into the Apartment until after Ms. Aparicio's death and was never added to the lease as a tenant or authorized occupant. Throughout the proceedings before the Trial Court, Mr. Mendez asserted that Mr. Castillo was his "night and weekend" home health aide.

On April 17, 2019, Potomac Place served Mr. Mendez and Mr. Castillo with a 120-Day Notice of Intent to Convert and provided the 60-day exclusivity period to enter into a contract to purchase the Apartment. *See* JA 0063. The 120-Day Notice of Intent to Convert expressly stated that Mr. Mendez and Castillo had a 60-day exclusivity period to contract to purchase the Apartment and that if they did not enter into a purchase agreement, they were required to quit and vacate the Apartment by no later than August 10, 2019. *Id.*

Neither Mr. Mendez nor Mr. Castillo entered into a purchase agreement, either during the 60-day exclusivity period or at any point thereafter. *See* Mot. for Summ J. (May 23, 2022) at Exhibit 4 (Affidavit of Mr. Russell Hines). In addition to the 120-Day Notice of Intent to Convert which contained a deadline by which they were to vacate, Potomac Place also served Mr. Mendez and Mr. Castillo with a stand-alone 30-Day Notice to Vacate which provided a new and extended vacate date of August 31, 2019. *See* JA 0104.

When neither Mr. Mendez nor Mr. Castillo vacated the Apartment by August 31, 2019, Potomac Place filed a complaint for possession of the Apartment in the Landlord & Tenant Branch of the Superior Court. *See* JA 0013.

Mr. Mendez and Mr. Castillo remain in possession of the Apartment today.

V. APPLICABLE STANDARD OF REVIEW

This Court's interpretation of statutes "presents a question of law that [this Court] consider[s] *de novo.* *See Aziken v. District of Columbia,* 194 A.3d 31, 34 (D.C. 2018). This Court reviews a trial court's grant of summary judgment *de novo* and applies the same standard as the trial court did when considering the motion for summary judgment. *Id*; *see also Sears v. Catholic Archdiocese of Washington,* 5 A.3d 653, 657 (D.C. 2010). The Court must determine whether the party awarded summary judgment demonstrated that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See George Washington University v. Bier*, 946 A.2d 372, 375 (D.C. 2008).

The Trial Court's order granting Mr. Mendez's motion for summary judgment provides no findings of facts or conclusions of law and merely refers to the "entire record," which naturally includes its legal analysis from the hearing on Potomac Place's Motion for Summary Judgment held on September 9, 2022. *See* JA 0086. The Trial Court's analysis resulting in denial of Potomac Place's Motion for Summary Judgment was a purely legal analysis based on statutory interpretation. *See* JA 0068.

Remand to the Trial Court is inappropriate as this is a clear case about which parties' interpretation of the statute is correct. As Potomac Place shows below, the

only way Mr. Mendez prevails is if the 2006 amendments to the Act are given retroactive effect in spite of no clear language providing for retroactivity.

VI. SUMMARY OF THE ARGUMENT

This case is about applying the plain language of the statute in force at the time of the Conversion Election – November 28, 2005. The outcome of this appeal is governed by this Court's decision in *Redman v. Potomac Place Associates LLC,* 972 A.2d 316 (D.C. 2009).

In November 2005, Mr. Mendez was ineligible under the then current legislative scheme to claim a statutorily protected tenancy. Ms. Aparicio, on the other hand, was eligible to claim such protections and, accordingly, was designated the head of household for the Apartment. Upon confirmation of her eligibility as low-income elderly by CCCSB, Ms. Aparicio was a protected tenant and she and Mr. Mendez's tenancy in the Apartment continued without interruption for 13 years. At no point during Ms. Aparicio's lifetime did Potomac Place serve either she or Mr. Mendez a 120-Day Notice of Intent to Convert or a 30-Day Notice to Vacate.

When Ms. Aparicio passed away, the statutory life tenancy and protections from eviction afforded by her status as a low-income elderly tenant expired. It was only at this time that Potomac Place served Mr. Mendez and Mr. Castillo with a

120-Day Notice of Intent to Convert and a 30-Day Notice to Vacate was properly issued. *See* JA 0065 and JA 0104.

Mr. Mendez cannot identify any portion of the Act in existence either on the Conversion Election date (November 28, 2005) or in the Act as subsequently amended, which transfers or extends a qualified low-income elderly tenant's (who is by definition the head of household, *see* D.C. Code §42-3402.08(c)), statutory tenancy and protections from eviction to another member of that protected tenant's household.

Indeed, the City Council recognized that low-income residents could be displaced by a condominium conversion and included provisions for such impacted tenants to receive relocation assistance (D.C. Code §42-3403.02); relocation services (D.C. Code §42-3403.03); and housing assistance payments (D.C. Code §42-3403.04). If this Court were to affirm the Trial Court, it would be giving subsequent amendments to the Act retroactive application – something not contemplated by the plain language of the Act's amendments. Extending protections unique to Ms. Aparicio based on her status on the date of the Conversion Election to Mr. Mendez as the Trial Court did below improperly creates a new class of protected tenants out of whole cloth – co-tenants who are ineligible for statutory protections on the date of the condominium conversion election assume or obtain the rights of the qualified head of household. This

interpretation is far outside the scope of the Act and materially interferes with the antecedent property rights of Potomac Place. This Court should apply the plain language of the Act objectively to this matter and, in doing so, hold that Mr. Mendez: (i) was not eligible to claim the protections in place at the time of the Conversion Election related to low-income elderly; and (ii) cannot claim the protections for low-income disabled that were added in 2006, nearly a year after the Conversation Election.

VII. ARGUMENT

A. MR. MENDEZ WAS NOT A PROTECTED TENANT AT THE TIME OF THE CONVERSION AND ACCORDINGLY CANNOT CLAIM THE PROTECTIONS OF THE ACT

It is indisputable that at the time of the Conversion Election, Mr. Mendez was not a protected low-income elderly tenant within the meaning of D.C. Code §42-3402.08 (2001) nor could he qualify to be one. Mr. Mendez was not "62 years of age or older" with an "annual income, as determined by the Mayor, of less than $40,000 per year." *See* D.C. Code §42-3402.08(a) and (c) (2001). Accordingly, Mr. Mendez standing on his own was not entitled to the statutory protections from eviction or receiving a notice to vacate as they each relate to the condominium conversion.

Ms. Aparicio did qualify as a low-income elderly tenant and was entitled to protection from eviction or receiving a notice to vacate, subject to three limited exceptions. *See* D.C. Code §42-3402.08(a)(1) - (3) (2001).

These protections found in D.C. Code §42-3402.08 are personal to the qualified heads of households as of the date of the condominium conversion election. At the time of the Conversion Election, such protections only covered those heads of household the Mayor qualified as low-income elderly. In other words, the qualified protections were personal to Ms. Aparicio only, not to Mr. Mendez. Ms. Aparicio was the head of household, not Mr. Mendez; Ms. Aparicio was low-income elderly, not Mr. Mendez. Mr. Mendez, as a co-tenant on the lease, benefited from the protections afforded to Ms. Aparicio in that her tenancy could not be terminated during her life without her consent (e.g., voluntarily vacating; passing away) or for the narrow exceptions stated in D.C. Code §42-3402.08(a)(1) - (3) (2001) (non-payment of rent; breach of obligation of tenancy and failure to cure within 30-day cure period; and judicial determination that the tenant committed an illegal act in the apartment or housing accommodation); but only for as long as Ms. Aparicio remained in the Apartment.

For 13 years, Mr. Mendez benefited from the protections afforded to Ms. Aparicio due to her low-income elderly status by being able to continue to reside in the Apartment, but he was never vested with Ms. Aparicio's right to remain for the

duration of his life. When Ms. Aparicio died on January 23, 2019, so too did her statutory life tenancy, and Mr. Mendez was no different than any other tenant without a statutory life tenancy.

B. *REDMAN V. POTOMAC PLACE ASSOCIATES LLC*, 972 A.2D 316 (D.C. 2009), MANDATES REVERSAL AND ENTRY OF JUDGMENT IN FAVOR OF POTOMAC PLACE

This Court's decision in *Redman v. Potomac Place Associates LLC*, 972 A.2d 316 (D.C. 2009), is directly on point and, therefore, mandates a consistent outcome in this appeal. *Redman* involves: (i) the same housing accommodation; (ii) the same condominium conversion election; and (iii) the same arguments about the inapplicability of the 2006 amendments that added "disabled tenants" to those tenants protected from eviction.

As eloquently stated in *Redman*, "[t]he major issue before us in this appeal is whether Ms. Redman was protected from eviction as a 'disabled tenant.'" *Redman*, 972 A.2d at 318. The answer in *Redman* was no and the same logic applies here.

Mr. Mendez was not certified as a low-income disabled tenant as of the date of the Conversion Election for one simple reason – no such classification existed on November 28, 2005. *See* D.C. Code §42-3402.08(c)(1) (2007) ("an elderly or disabled tenant shall qualify under this subchapter if, on the day a tenant election is

held for the purposes of conversion, the elderly or disabled tenant [meets the listed qualifications]") (underlined emphasis added).

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language used. *See Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64 (D.C. 1980) (*en banc*) (quoting *United States v. Goldenberg*, 168 U.S. 95, 102-03 (1897)); *see also Peoples Drug Stores v. District of Columbia*, 470 A.2d 751 (D.C. 1983). It is axiomatic that the "words of . . . [a] statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Davis v. Unites States*, 397 A.2d 951, 956 D.C. 1979); *United States v. Thompson*, 347 A.2d 581, 583 (D.C. 1975). Accordingly, this Court must first look to the plain meaning of the Act and interpret the words used pursuant to their "ordinary sense and meaning." *Id.* If the words used are clear and unambiguous, no further inquiry into meaning is necessary. *See Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003). Courts should avoid reading a statute in a way that renders words meaningless or superfluous. *See, e.g., Atkinson v. State*, 627 A.2d 1019, 1027 (Md. 1993). Effect must be given to every portion of a statute so that no part will be inoperative or superfluous. *See Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1274-75 (D.C. 1997).

Mr. Mendez asserts that because he is a low-income disabled tenant, he cannot be evicted. *See* Opp'n to Mot. for Summ. J. at 8-9 (filed June 24, 2022).

However, that provision did not become effective until November 16, 2006 – nearly one year after the Conversion Election. *See* JA 0053. Mr. Mendez cannot now claim this protection when he could not have done so at the time of the election unless the City Council explicitly made the 2006 amendments retroactive, which it did not. Hence, it applies only prospectively.

Indeed, the new protected status of being "disabled" under D.C. Code §42-3402.08 did not take effect until November 16, 2006. *Compare* D.C. Code §42-3402.08 (2007) with D.C. Code §42-3402.08 (2001). The statute is explicit in subsection (c). Mr. Mendez needed to qualify for protection when the housing provider requested the tenant election. D.C. Code §42-3402.08(c) (2001). Mr. Mendez could not qualify because if he were disabled at that time, disabled individuals were not a protected class of tenants when the election took place in 2005 – only low-income elderly were.

To avoid the obvious and inevitable result of the application of the plain language of the statute and the *Redman* decision, Mr. Mendez argued that if one tenant qualifies as a protected tenant, the entire household does. *See* Opp'n to Mot. for Summ J. at 11-12 ("Accordingly, when Teresa Aparicio qualified for protected tenant status that was shared among all members of the household, including Defendant Mendez.").

D.C. Code §42-3402.08 states only low-income elderly tenants as of the date of the condominium conversion election shall not receive a notice to vacate or be evicted – it says nothing about any protections being assignable, bequeathable, devisable, or otherwise transferrable to a non-head of household resident once the low-income elderly tenant dies or vacated the unit. *See* D.C. Code §42-3402.08(a) (2001). In essence, this is a personal right of Ms. Aparicio. It is not an alienable property right. It cannot be pledged for a loan, it cannot be sold, and it cannot be listed on her financial statement. The statutory life tenancy lives and dies with Ms. Aparicio and nobody else. Mr. Mendez would have this protection apply to "all members of the household, including Defendant Mendez." Opp'n to Mot. for Summ. J. at 12.

Such an interpretation not only affirmatively adds relief to an entire class of tenants not previously protected – co-tenants of protected individuals – it also reads the statute in a manner that renders the "head of household" language of D.C. Code §42-3402.03(d) superfluous – an interpretation technique generally disfavored by the Court. *See Marshall*, 533 A.2d at 1274 - 75. The Act recognizes only one head of household for each rental unit and any statutorily protected status ties to that specific, identified, head of household. *See id.*

Mr. Mendez has made much of the argument that a plain reading of D.C. Code §42-3402.08 would require co-tenants to foresee who would outlive the

other(s) to prevent the eviction of surviving co-tenant upon the death of the head of household. *See* Opp'n to Mot. for Summ. J. at 15. It is the Court's place to apply the law as written and give effect to its plain meaning. *See, e.g.*, *Williams v. District of Columbia*, 916 F. Supp. 1, 9 (D.D.C. 1996) ("Absent compelling legislative history to the contrary, federal courts are obligated to apply statues as written."). If the City Council intended to provide such expansive protections, it would have stated so in the Act or its progeny. It did not, but it did amend D.C. Code §42-3402.08 in multiple other ways, including the Elderly Tenant and Tenant with a Disability Amendment Act of 2016, D.C. Law 21-239 (April 7, 2017). There is nothing in the Act or any subsequent modification to the Act that supports his interpretation – that all members of the household enjoyed protected tenant status that is particular to the head of household – Ms. Aparicio.[3]

Such an interpretation for expansion of the personal right of a qualified tenant to protect all household members gives rise to expansive coverage far beyond the plain language of the Act. Indeed, under this interpretation, qualified low-income elderly could die or vacate the unit, but those remaining tenants who did not qualify for statutory protection as of the date of the conversion election would remain shielded from eviction in perpetuity. This would give rise to such

[3] Moreover, Mr. Mendez has suggested that applying a plain reading of the statute would lead to "absurd results." While citing none – for a statute that has been existence for over forty years. *See* Opp'n to Mot. for Summ. J. at 14.

uncertainty that a declarant could have no reasonable manner of determining when possession of a unit occupied by both a qualified head of house and other household members could be recovered, and the unit subsequently sold. If Ms. Aparicio were to have moved out of the Apartment, rather than passed away, would the continued presence of the qualified protected tenant have no bearing on the duration of the protections under the Act, or do they continue in perpetuity? This cannot be what the City Council intended and there is no language to support such an interpretation.

C. THE TRIAL COURT WRONGLY APPLIED THE AMENDMENTS TO THE ACT RETROACTIVELY

Retroactive application of a statute is not favored. *West End Tenants' Ass'n v. George Washington Univ.*, 640 A.2d 718 (D.C. 1994); *Mayo v. Dist. of Columbia Dep't of Empl. Servs*, 739 A.2d 807, 811 (D.C. 1999) ("a retroactive operation will not be given to a statute . . . unless such be the 'unequivocal and inflexible import of the terms.'"); *Alpizar v. United States*, 595 A.2d 991, 993-994 (D.C. 1991) ("The first rule of construction is that legislation must be considered as addressed to the future, not the past.") (quoting *Greene v. United States*, 376 U.S. 149, 160 (1964). The principle that statutes operate only prospectively, while judicial decisions generally operate retrospectively, is well established. *See U.S. v. Sec. Indus. Bank*, 459 U.S. 70, 79-80 (1982) (comparing 1 C. Sands, Sutherland on

Statutory Construction § 1.06 (4th Ed. 1972) *with Linkletter v. Walker*, 381 U.S. 618, 622-25 (1965)). The Supreme Court has made clear:

> [The] first rule of construction is that legislation must be considered as addressed to the future, not to the past . . .. The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be 'the unequivocal and inflexible import of the terms and the manifest intention of the legislature.' *Union Pacific R. Co. v. Laramie Stock Yards Co,*, 231 U.S. 190, 199 (1913) (citations omitted).

Sec. Indus. Bank, 459 U.S. at 79-80; *see also Childs v. Purll*, 882 A.2d 227, 238 (D.C. 2005) (noting that even if the D.C. Council intended to expand rights under the D.C. Consumer Protection Procedures Act, there was no indication it intended such expansion to be retroactive) (*citing D.C. v. Gallagher*, 734 A.2d 1087, 1093 (D.C. 1999)); *Mayo*, 738 A.2d at 811; *Davis v. D.C.*, 2010 D.C. Super. LEXIS 6 at *5-6 (D.C. Super. Ct. Nov. 23, 2010) (noting that in the absence of a clear manifestation of legislative intent, there is a general presumption against the retroactive application of new laws). Accordingly, under the general rule, the 2007 amendment to the Act, which added disabled individuals as a protected class of tenants, should not have been retroactively applied by the Trial Court in this case.

There is nothing in the 2006 amendments clearly and unequivocally indicating that it was ever intended to be retroactive.

Had the Council intended to make the statute retroactive, it easily could have done so. It did not and, indeed, the idea of doing so was not even discussed in the legislative history. *See Council of the District of Columbia Committee on Consumer and Regulatory Affairs Committed Report* dated June 15, 2016, regarding Bill 16-724, the "Low-Income Disabled Tenant Rental Conversion Protection Amendment Act of 2006."

Indeed, this Court had an opportunity to find that the City Council intended to make the 2007 amendment retroactive in *Redman* but declined to do so. *See Redman*, 972 A.2d at 319 n.4. In *Redman* – a case pertaining to the same property and landlord – the Court considered whether a tenant who claimed protection as a "disabled tenant" under an amendment to D.C. Code §42-3402.08, which became effective only during the course of Potomac Place's eviction action against her. *See id.* at 317. The Court held that when the amendment took effect, Ms. Redman was not then a "tenant" subject to the prohibition on eviction within the meaning of the statute. *See id.* at 321. Therefore, even if Ms. Redman had not yet been "evicted" within the meaning of the statute by that date, the statute did not prevent Potomac Place from seeking and obtaining possession of her unit. *See id.* The Court specifically held that there was no legislative intent to apply such a modification to the statute retroactively. *See id.* at 319 n. 4.

Redman closely mirrors the facts in this case. Mr. Mendez was not a protected head of household under the statute at the time of the condominium conversion. *See* JA 0053-62; *see Redman*, 972 A.2d at 321 ("We are satisfied that . . . when the amendment protecting disabled tenants took effect, Ms. Redman was not a "tenant" subject to the prohibition on eviction within the meaning of the statute."). Ignoring *Redman*, the Trial Court applied the protections of a subsequent amendment to the statute retroactively to the date of the conversion election, even though such a date was well before the amendment. *See* Opp'n to Mot. for Summ. J. at 8-9 (filed June 24, 2022). This Court has specifically rejected such an approach and should do so here as well. *See Redman*, 972 A.2d at 321.

VIII. CONCLUSION

Unless this Court chooses to write retroactive application into the 2007 Amendment, there is no basis upon which the Trial Court's decision can be affirmed. Mr. Mendez and Mr. Castillo were not qualified tenants at the time of the Conversion Election. Their protection was based upon and co-terminus with Ms. Aparicio's. Mr. Mendez and Mr. Castillo cannot prevail and accordingly, the decision of the Trial Court should be reversed with directions to enter a non-redeemable judgment for possession in favor of Potomac Place.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: March 22, 2024

/s/ Joshua M. Greenberg

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2024, a copy of the foregoing, along with the Joint Appendix, was served electronically on all counsel registered for electronic filing with the District of Columbia Court of Appeals and was further served by first-class mail, postage prepaid, on: Fernando Castillo, 800 4th Street, S.W., Unit N720, Washington, D.C. 20024.

/s/ Joshua M. Greenberg
Joshua M. Greenberg, Esq.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

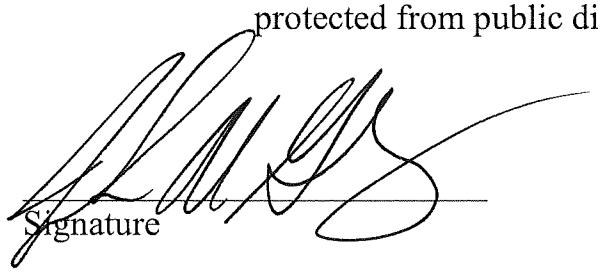
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

23-CV-271 (on appeal from 2019 LTB 022079)

Case Number(s)

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