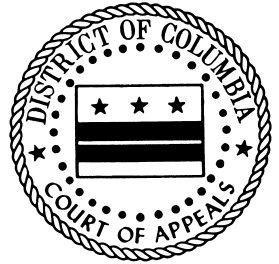


NO. 23-CV-0719



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**DISTRICT OF COLUMBIA COURT OF APPEALS**

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WONDER TWINS HOLDINGS, LLC,

Appellant,

v.

450101 DC HOUSING TRUST,

Appellee.

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Appeal from the District of Columbia Superior Court  
2021-CA-000141-B  
(Honorable Robert Rigsby)

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**BRIEF OF APPELLANT WONDER TWINS HOLDINGS, LLC**

February 5, 2024

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## DISCLOSURE STATEMENT

*Appellant (Wonder Twins Holdings, LLC)*

- Wonder Twins Holdings, LLC is represented by Ian G. Thomas and Tracy Buck of the law firm Offit Kurman.

*Appellee (450101 DC Housing Trust)*

- 450101 DC Housing Trust is represented by Brian T. Gallagher of Gallagher Law.

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## **INTRODUCTION**

The legal issues in this appeal simply require the application of this Court’s decision in *Chase Plaza* and its subsequent progeny. Appellant Wonder Twins Holdings, LLC (“Wonder Twins”) purchased the subject condominium unit at a super-priority lien foreclosure sale, which extinguished the lender’s first deed of trust as this Court recognized in *Chase Plaza v. JP Morgan Chase Bank*, 98 A.3d 166, 173 (D.C. 2014). The extinguishment of the first deed of trust occurred notwithstanding the representation that the first deed of trust would survive, as this Court confirmed in its decision in *Liu v. U.S. Bank National Association*, 179 A.3d 871, 879 (D.C. 2018). The lower court ignored this well-settled precedent and determined that Appellee 450101 DC Housing Trust (“Housing Trust”) had superior title to the property at issue based on a subsequent foreclosure of the extinguished deed of trust. As discussed more below, this misapplication of law requires the reversal of the lower court’s decision.

### **RULE 26.1 CORPORATE DISCLOSURE**

Appellee Wonder Twins Holdings, LLC is a privately held limited liability company and does not have any members or shareholders that are a publicly traded company.

## STATEMENT OF ISSUES

1. Whether the lower court contradicted this Court's holding in *Chase Plaza* in finding that a first deed of trust is not extinguished as a result of a super-priority condominium lien foreclosure sale.
2. Whether the lower court contradicted this Court's holding in *Liu* in finding that the condominium association's representations that a super-priority condominium lien foreclosure sale could be conducted "subject to" a first deed of trust controlled the preservation of the lender's lien.

## STATEMENT OF THE CASE

This appeal arises out of competing claims to quiet title to the real property located at 450 Condon Terrace, SE, Unit 101, Washington, DC ("Property") between Wonder Twins and Housing Trust. On August 17, 2017, Wonder Twins became the owner of the Property as the successful purchaser at a super-priority condominium lien foreclosure sale conducted pursuant to D.C. Code § 42-1903.13. App. 168-70. Five months later, Housing Trust purchased the same condominium unit as a result of a judicial mortgage foreclosure sale.<sup>1</sup> App. 194-96. Both Wonder Twins and Housing Trust recorded their Trustee's Deeds resulting from their respective foreclosure sales within two months of each auction.

On January 5, 2021, Housing Trust filed suit against Wonder Twins, seeking declaratory relief to quiet title to the subject condominium unit, claiming an

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<sup>1</sup> The judicial foreclosure action in which Housing Trust purchased the Property is styled *Wilmington Savings Fund Society, FSB, et al. v. Mark E. Taylor*, Case No. 2016 CA 8913 R(RP). App. 231-43. Importantly, Wonder Twins was not a party to that action despite being a record owner of the real property. App. 232. The import of this fact is discussed in more detail *infra*.



ownership interest in the property free and clear of any claims to title held by Wonder Twins. App. 019-27. After service was allegedly effectuated upon Wonder Twins, Housing Trust moved for default against Wonder Twins who originally failed to respond to the Complaint. App. 004. On September 24, 2021, a default judgment was entered against Wonder Twins. App. 008. Soon thereafter, on November 1, 2021, Wonder Twins filed a Verified Answer to the Complaint and Counterclaim against Housing Trust. App. 099-114. Wonder Twins also filed a Motion to Quash Service of Process and Vacate Default Judgment, which was granted by the lower court on February 22, 2022. App. 011.

Wonder Twins' Counterclaim seeks declaratory relief quieting title to the condominium unit, claiming that its ownership interest is superior to Housing Trust's claim to title. App. 110-113. The basis for Wonder Twins' claim to title is that it holds title free and clear of any encumbrances as a result of the super-priority lien condominium sale which, pursuant to D.C. Code § 42-1903.13, extinguished the first Deed of Trust that encumbered the Property at the time of sale. *See id.* Due to the extinguishment of the Deed of Trust, the foreclosure sale through which Housing Trust purchased the Property was invalid. On March 23, 2022, Housing Trust filed an Answer to the Counterclaim. App. 115-18.

On May 10, 2022, the Court issued a Track 3 Mediation Scheduling Order and the parties began to engage in discovery. App. 013. Housing Trust ultimately

filed a Motion to Compel Discovery against Wonder Twins for its failure to respond to discovery. App. 014. Wonder Twins opposed the Motion and appended its written discovery responses and documents production thereto. *Id.* On March 3, 2023, the Court denied the Motion to Compel. *Id.* The record reflects that this was the only discovery exchanged amongst the parties.

On May 1, 2023, Housing Trust filed a Motion for Summary Judgment, seeking declaratory relief that the trial court quiet title as to its fee simple ownership interest in the subject condominium unit and its right to immediately possess same. App. 119-35. Wonder Twins opposed the Motion, demonstrating that its ownership rights in the property are superior to that of Housing Trust because Housing Trust's claim to title stems from the foreclosure of an invalid deed of trust. App. 218-22. Specifically, Wonder Twins argues that the first deed of trust was extinguished by the very super-priority lien sale that it successfully purchased the condominium unit from. *Id.* On August 2, 2023, the trial court granted summary judgment in Housing Trust's favor, declaring that it holds fee simple title to the condominium unit free and clear of any claims to title held by Wonder Twins. App. 223-30. The trial court also awarded Housing Trust possession of the unit. App. 230. Wonder Twins noticed this appeal on August 2, 2023.

## STATEMENT OF FACTS

On November 9, 2006, Mark Taylor (“Taylor”) purchased the condominium unit located at 450 Condon Terrace, SE, Unit 101, Washington, DC (“Property”). App. 155. The Property is located in the condominium building operated by the Highland Court Condominium (the “Association”). *Id.* To finance the purchase of the Property, Taylor obtained a loan from Bank of America, N.A. (the “Lender”) in the amount of \$182,598.00, which was secured by a first deed of trust on the Property (“Deed of Trust”) that was recorded amongst the District of Columbia Land Records on January 31, 2007. App. 136-54.

As early as 2016, Taylor defaulted on both his mortgage payments to the Lender and payments of his condominium assessments to the Association. On December 9, 2016, the Lender<sup>2</sup> filed a judicial foreclosure action against Taylor to initiate foreclosure proceedings if its Deed of Trust in default (the “Lender’s Foreclosure Case”). App. 231-32. Soon thereafter, on December 20, 2016, the Association recorded a Notice of Lien for Assessments Due (“Notice of Condo Lien”), which was recorded as Instrument No. 2016131862 in the District of Columbia Land Records.<sup>3</sup> The Notice specified that over two years of assessments

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<sup>2</sup> “Lender” shall hereinafter refer to the original beneficiary of the Deed of Trust, Bank of America, N.A., and all of its successors-in-interest, including the Plaintiff that initiated the judicial foreclosure proceedings and its substituted successors-in-interest thereafter.

<sup>3</sup> While neither the Notice of Condo Lien nor the Notice of Condo sale (identified *infra*) were appended to the filings in the record below, the court can take judicial notice of matters of

were outstanding. All unpaid assessments constitute a lien (“Condo Lien”). D.C. Code § 42-1903.13(a).

On July 12, 2017, the Association recorded its Notice of Foreclosure Sale of Condominium Unit for Assessments Due amongst the District of Columbia Land Records as Instrument No. 2017076225 (“Notice of Condo Sale”), advertising its auction pursuant to D.C. Code § 42-1903.13. *See supra* fn. 3. The condominium foreclosure sale occurred on August 17, 2017, wherein Wonder Twins was the highest bidder to purchase the Property in the amount of \$13,000 (the “Condo Sale”). App. 168. The Association subsequently executed a Trustee’s Deed in favor of Wonder Twins, which was recorded in the District of Columbia Land Records on October 11, 2017. App. 169-70.

Meanwhile, Taylor had failed to participate in the Lender’s Foreclosure Case, and consequently, a default judgment was entered against him on November 17, 2017. App. 237. Notwithstanding Wonder Twins’ record ownership interest in the Property, the Lender did not include Wonder Twins as a party defendant to the case. App. 241. Additionally, notwithstanding this Court’s 2014 opinion in *Chase Plaza v. JP Morgan Chase Bank*, 98 A.3d 166 (D.C. 2014) – holding that a condominium association foreclosing on its six-month super-priority lien pursuant to D.C. Code §

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public record, as these filings were recorded in the District of Columbia Land Records. *See Drake v. McNair*, 993 A.2d 607, 616 (D.C. 2010).

42-1903.13(a)(2) extinguishes a first deed of trust on the property – the Lender continued its efforts to obtain the judgment and enforce same. *Id.* at 175; App. 237. On January 11, 2018, the Lender conducted its judicial foreclosure of the Deed of Trust, wherein Housing Trust was the highest bidder at auction in the amount of \$80,000 (the “Lender Sale”). App. 191. The Lender then executed a Trustee’s Deed in favor of Housing Trust and recorded it in the District of Columbia Land Records on March 20, 2018. App. 194-96.

This quiet title dispute followed as to Wonder Twins’ and Housing Trust’s competing claims to title to the Property, both of which stem from the Association’s Condo Sale and the Lender’s Sale, respectively.

### **SUMMARY OF THE ARGUMENT**

The lower court’s decision that Housing Trust holds superior title in the Property to that of Wonder Twins should be reversed. The facts concerning the Condo Sale are undisputed and the record reflects that the Condo Lien consisted of more than six months of assessments owed to the Association. Thus, the Association’s foreclosure of its Condo Lien included its super-priority lien pursuant to D.C. Code § 42-1903.13. *See 4700 Conn 305 Trust v. Capital One, N.A.*, 193 A.3d 762, 765 (D.C. 2018). When Wonder Twins purchased the Property at the Condo Sale for an amount that was insufficient to satisfy the first Deed of Trust, the Lender’s lien was extinguished as a matter of law. *See Chase Plaza Condominium*

*Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 173 (D.C. 2014). As a result, Wonder Twins acquired title to the Property free and clear of the Lender's Deed of Trust. *Id.* The Lender had no valid lien to foreclose upon and accordingly, Housing Trust acquired no rights to title in the Property at the Lender's Sale.

The trial court's initial error in holding otherwise is that it confused claims to title with lien priority. As a matter of law, a superior claim to title is based on a bona fide purchaser's recordation of its deed in the District of Columbia Land Records. It is undisputed that the Condo Sale was a valid foreclosure sale, rendering Wonder Twins a bona fide purchaser of the Property. It is also undisputed that Wonder Twins recorded its Trustee's Deed three months prior to the Lender's Sale. At the time Wonder Twins recorded its deed, the world was on notice of the legal implications of the Condo Sale and its extinguishment of the Deed of Trust. The Lender's foreclosure was of an invalid lien and Housing Trust assumed the risk that it purchased no rights to title by bidding at the Lender's Sale.

The trial court also erred in failing to apply *Chase Plaza* and its subsequent progeny to the Condo Sale. Had the trial court applied *Chase Plaza*, it should have held that the Condo Sale extinguished the Deed of Trust. *See Chase Plaza, supra.* The trial court also incorrectly held that the Association's representations that the Property was being held "subject to" prior liens was controlling. This Court has held that such representations are invalid because a super-priority lien cannot be waived

pursuant to the D.C. Code § 42-1901.07. *See Liu v. U.S. Bank National Association*, 179 A.3d 871, 878 (D.C. 2018). Had the trial court applied these binding precedents, it is clear that the Deed of Trust was extinguished by virtue of the Condo Sale and Wonder Twins' claim to title is superior to that of Housing Trust.

As discussed in more detail below, the lower court's ruling should be reversed.

### **STANDARD OF REVIEW**

The Court of Appeals reviews the trial court's granting of summary judgment *de novo*, applying the same standard of analysis the trial court performed in considering the motion based on the record before it. *E.g., Perkins v. District of Columbia*, 146 A.3d 80, 84 (D.C. 2016) (internal citation omitted). Statutory interpretation of D.C. Code § 42-1903.13 is also a question of law that this Court is to consider *de novo*. *E.g., Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 172 (D.C. 2014).

### **ARGUMENT**

Long standing statutory law and almost a decade's worth of jurisprudence from this Court require that the trial court's decision be reversed. Wonder Twins obtained title to the Property free and clear of the Lender's Deed of Trust by virtue of the Condo Sale conducted pursuant to D.C. Code § 42-1903.13. This Court's decision from *Chase Plaza* and its progeny confirm that an unsatisfied first deed of trust is extinguished by such a super-priority lien sale irrespective of any

representation that the auction was conducted “subject to” a first deed of trust. As a result, the Lender’s subsequent foreclosure of its extinguished Deed of Trust, was improper. It thus follows that Housing Trust’s purchase of the Property from an invalid auction is null and void. The trial court’s ruling that Housing Trust holds superior title to the Property to that of Wonder Twins should be reversed on appeal.

I. THE TRIAL COURT INCORRECTLY HELD THAT THE DEED OF TRUST WAS NOT EXTINGUISHED AS A RESULT OF A SUPER-PRIORITY LIEN CONDOMINIUM SALE.

Binding precedent from this Court confirms that the lower court should have quieted title in Wonder Twins’ favor. This Court has held that an analysis as to whether the Condo Sale extinguished the Lender’s Deed of Trust under D.C. Code § 42-1903.13 begins with an interpretation of the governing statute itself. *See Chase Plaza Condominium Ass’n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 172 (D.C. 2014). The District of Columbia Condominium Act (the “Act”) governs the operation of condominium associations and the creation of its liens. *Id.* at 173 (citing D.C. Code § 42-1901.01, *et seq.*). D.C. Code § 42-1903.13(a) provides that any assessment levied against a condominium unit that is not satisfied when it becomes due and payable shall constitute a lien in favor of the unit owners’ association on that condominium unit. A condominium lien shall be prior to any other lien except *inter alia* a first mortgage or deed of trust. D.C. Code § 42-1903.13(a)(1). The Act provided a carveout to this rule, such that the most recent six months of



condominium assessments owed take superior priority to that of a first mortgage or deed of trust. *See id.* at (a)(2). This Court in *Chase Plaza* clarified this exception in explaining the following:

[T]he Act effectively splits condominium-assessment liens into two liens of differing priority: (1) a lien for six months of assessments that is higher in priority than the first mortgage or first deed of trust – sometimes called a “super-priority lien” – and (2) a lien for any additional unpaid assessments that is lower in priority than the first mortgage or first deed of trust.

*See Chase Plaza*, 98 A.3d at 173. In sum, the Act establishes lien priority as follows: (1) an association’s super-priority lien (most recent six months of assessments owed); (2) a lender’s first deed of trust; (3) the junior portion of the condominium lien comprised of any remaining unpaid assessments owed on the unit; and (4) all inferior liens recorded thereafter. *See id.*

The outcome of a foreclosure of a super-priority lien is that a first deed of trust will be extinguished if the auction proceeds do not satisfy the lender’s lien. *See id.* For over a decade now, this Court has reaffirmed this holding. *See, e.g., 4700 Conn 305 Trust v. Capital One, N.A.*, 193 A.3d 762, 764 (D.C. 2018) (citing *Chase Plaza, supra* at 172); *RFB Properties II, LLC v. Deutsche Bank Trust Company Americas, as Trustee for Residential Accredited Loan, Inc. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QA8*, 247 A.3d 689, 691-92 (D.C. 2021). The import of this holding is that a “foreclosure sale purchaser acquires free and clear title” to the condominium unit. *Chase Plaza, supra* at 172.

The Association's foreclosure of its super-priority condominium lien extinguished the Lender's Deed of Trust. The Notice of Condo Lien and Notice of Condo Sale demonstrate that the Association was foreclosing on its Condo Lien that encompassed over two years' worth of unpaid assessments. As a matter of law, the Condo Lien comprised of the super-priority portion of the lien. *See 4700 Conn 305 Trust v. Capital One, N.A.*, 193 A.3d 762, 765 (D.C. 2018). At the auction, Wonder Twins purchased the Property as the highest bidder in the amount of \$13,000. App. 168. The sales proceeds, after satisfying the super-priority lien, were insufficient to satisfy the outstanding debt on the Deed of Trust. *Compare id.*, with App. 137 (the Deed of Trust's principal balance was \$182,598). Housing Trust does not dispute any of these facts concerning the Condo Sale. App. 133-34. As a matter of law, when the Condo Sale proceeds were insufficient to satisfy the Lender's lien, the Deed of Trust was extinguished. *See Chase Plaza, supra* at 172. The result is that, by virtue of the Condo Sale, Wonder Twins held title to the Property free and clear of any liens, including the Lender's Deed of Trust. *Id.*

Wonder Twins' title to the Property is superior to that of Housing Trust. Pursuant to D.C. Code § 42-401, conveyance of title to real property takes effect upon the date of delivery of a deed. However, the deed does not take effect against creditors and subsequent bona fide purchasers and mortgagees until they have notice of the conveyance by virtue of its recordation in the Recorder of Deeds. *Id.*

Following the Condo Sale, on October 11, 2017, Wonder Twins recorded its Trustee's Deed in the District of Columbia Land Records. App. 169-70. At that time, both the Lender and Housing Trust were on notice of Wonder Twins' ownership interest in the Property and the legal implications of the Condo Sale – i.e., the extinguishment of its Deed of Trust. *See McKinley v. Crawford*, 61 App.D.C. 123, 125 (D.C. 1932) (recordation of a deed puts the world on notice).

The import of Wonder Twins' recordation of its deed is that Housing Trust cannot be viewed as bona fide purchaser of the Property. A bona fide purchaser is one "who acquires an interest in property for valuable consideration and without notice of any outstanding claims which are held against the property by third parties." *Clay Properties, Inc. v. Washington Post Co.*, 604 A.2d 890, 894 (D.C. 1992) (internal citation omitted). However, a buyer cannot be a bona fide purchaser if they are on inquiry notice of a competing or superior claim to the Property. *See id.* Thus, as a matter of law, Housing Trust cannot be a subsequent bona fide purchaser to the Property to supersede Wonder Twins' interest therein. Housing Trust assumed the risk in bidding on distressed real estate and purchased nothing at the Lender's Sale because the Lender had no lien to enforce. *See Stuart v. American Sec. Bank*, 494 A.2d 1333, 1338 (D.C. 1985) (noting that "the doctrine of *caveat emptor* applies to foreclosure sales"). Wonder Twins' title to the Property from the Condo Sale is superior to Housing Trust's claim to title from the Lender's Sale.

II. THE TRIAL COURT MISINTERPRETED THE LAW IN THREE MATERIAL WAYS IN REACHING ITS INCORRECT RULING THAT HOUSING TRUST HAS SUPERIOR TITLE TO THE PROPERTY.

The trial court's ruling should be reversed because it is based on three material misinterpretations of the law. The trial court held that Housing Trust's claim to title to the Property is superior to that of Wonder Twins' because the Lender's foreclosure of the Deed of Trust held a higher lien priority than the Condo Lien. App. 228 (holding that Housing Trust's "Trustee's Deed which stems from the foreclosure of the 2007 Deed of Trust is superior to [Wonder Twins'] Condo Foreclosure Deed...."). The trial court's holding is legally flawed for three reasons. First, the trial court incorrectly reasons that a purchaser's claim to title of a foreclosed property is superior to another foreclosure purchaser based on who's foreclosed upon lien held higher lien priority. Second, the trial court incorrectly determined that the Deed of Trust is a higher priority lien than the Condo Lien, which is directly contradicted by statute. Finally, the underlying error within the trial court's reasoning is its failure to apply the seminal case from this Court analyzing condominium lien foreclosures – *Chase Plaza*, and its progeny. The culmination of the aforementioned misinterpretations in the law guided the trial court's reasoning which, when corrected as explained below, warrants the reversal of the trial court's decision.

**A. Wonder Twins' Trustee's Deed Controls as the Operative Deed.**

Wonder Twins' superior claim to title is premised on its status as a bona fide purchaser and its earlier recordation of its Trustee's Deed and is not, as the trial court claims, premised on the lien priority status of the Condo Lien. It is presumed that a purchaser of a valid foreclosure sale is protected as a bona fide purchaser. *See Henok v. Chase Home Finance, LLC*, 890 F.Supp.2d 65, 71 (D.D.C. 2012). This record does not reflect that Housing Trust disputes the validity of the Condo Sale or that there were any improprieties in the Association's conduct of the auction. Wonder Twins was a bona fide purchaser of the Condo Sale because it acquired the Property for consideration (\$13,000) and without notice of any other claims to title. App. 168. Therefore, Wonder Twins enjoys the protections of a bona fide purchaser as the highest bidder at a valid foreclosure sale.

Wonder Twins' recordation of its Trustee's Deed protected it from claims to title to the Property from Housing Trust. A bona fide purchaser's interest in real property becomes effective against subsequent bona fide purchasers at the time it is recorded in Land Records. D.C. Code § 42-401. Wonder Twins recorded its Trustee's Deed on October 11, 2017 – notably, three (3) months before the Lender's Sale. App. 169-70. At that time, its rights to title in the Property became effective against all other creditors (i.e., the Lender) and other subsequent bona fide purchasers (i.e., Housing Trust). *See* D.C. Code § 42-401. Stated differently,

Wonder Twins' recordation of its Trustee's Deed put the world on notice of its claim to title in the Property as a bona fide purchaser. *See McKinley v. Crawford*, 61 App.D.C. 123, 125 (D.C. 1932). As a result, the Lender was charged with notice of the import of the Trustee's Deed from the Condo Sale.<sup>4</sup> *See Robinson v. District of Columbia*, 580 A.2d 1255, 1258 (D.C. 1990).

Housing Trust assumed the risks associated with its constructive notice of Wonder Twins' claim to title from its recorded Trustee's Deed when it bid at the Lender's Sale. *See id.* As a matter of law, the Deed of Trust was no longer a valid lien that the Lender could foreclose upon, and accordingly, Housing Trust purchased nothing when it bid at the Lender's Sale. *Chase Plaza, supra*. Housing Trust cannot be a bona fide purchaser because its claim to title stems from an invalid foreclosure sale. *See Henok v. Chase Home Finance, LLC*, 890 F.Supp.2d at 71. Stated differently, Housing Trust cannot claim superior title to that of Wonder Twins because it has no rights to title in the Property at all.

At bottom, the trial court erred in determining that superior title to real property is based on a foreclosed upon lien's priority and not the recordation of a deed memorializing a bona fide purchaser's interest in real property. Wonder

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<sup>4</sup> To the extent that the Trustee's Deed was recorded after *Liu* – holding that a super-priority lien condominium sale cannot be “subject to” a first deed of trust despite representations of same – the outcome is no different. *See Liu v. U.S. Bank National Association*, 179 A.3d 871, 879 (D.C. 2018). The Court of Appeals only clarified the plain language of the Condo Act and the anti-waiver provision in D.C. Code § 42-1901.07 in *Liu*; the law itself did not change. *See id.* at 878.

Twins' recorded Trustee's Deed controls and Wonder Twins enjoys the protections as a bona fide purchaser against Housing Trust's claims to title. Because Housing Trust has no rights to title in the Property, the trial court's determination that it is entitled to possession of the premises also fails. The trial court's decision must be reversed in its entirety.

**B. The Condo Lien Held Higher Lien Priority than the Deed of Trust.**

The trial court also erred in determining that the Deed of Trust was a higher priority lien than the Condo Lien. Under D.C. Code § 42-1903.13(b), whenever a unit owner fails to timely pay their assessments, a condominium lien is automatically formed and its recordation dates back to the recording of the condominium instruments. D.C. Code § 42-1903.13(b). The Association's governing instruments were recorded on August 24, 2006. App. 155. The Lender subsequently recorded its Deed of Trust on January 31, 2007. App. 049. Therefore, when Taylor inevitably failed to pay his condominium assessments, the super-priority portion of the Condo Lien held higher lien priority to that of the Lender's Deed of Trust. *See* D.C. Code § 42-1903.13(a)-(b); *Chase Plaza*, 98 A.3d at 173. This principle holds true irrespective of whether a Notice of Condo Lien is recorded, because the notice itself lies with the recordation of an Association's governing documents. *See id.* Therefore, the super-priority portion of the Condo Lien at all times was a higher priority lien than the Deed of Trust.

**C. The Trial Court Failed to Apply *Chase Plaza* and its Progeny.**

The underlying flaw in the trial court's analysis is its failure to apply the seminal case analyzing condominium lien foreclosures and its progeny. In its ruling, the trial court did not once reference *Chase Plaza* and expressly stated that neither *Liu* nor *4700 Conn* apply to the Condo Sale. App. 228-29. When properly applying these precedents, reversal of the trial court's order is appropriate as a matter of law.

The holding in *Chase Plaza* is instructive of the Deed of Trust's extinguishment as a result of the Condo Sale. As discussed *supra*, this Court confirmed that a super-priority condominium lien holds a higher lien position than that of a first deed of trust under D.C. Code § 42-1903.13(a)(2). *See Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 172 (D.C. 2014). When an association forecloses upon its super-priority lien and the sale proceeds are insufficient to satisfy a first deed of trust, the lender's lien is extinguished. *See id.* at 173. Applying these principles to the Condo Sale, when the Association foreclosed on its Condo Lien, which contained a super-priority lien, the Deed of Trust became extinguished when the sale proceeds were insufficient to satisfy the Lender's lien. *See supra*. As a result, Wonder Twins purchased the Property at the Condo Sale free and clear of any encumbrances, including the Deed of Trust. *Id.*



The trial court incorrectly concluded that the Deed of Trust survived the Condo Sale by explicitly refusing to apply the holding in *Liu*. In *Liu*, this Court held that D.C. Code § 42-1901.07 precludes waiver of the super-priority lien while preserving the bank’s unpaid lien. *See Liu v. U.S. Bank National Association*, 179 A.3d 871, 878 (D.C. 2018). This holding effectively invalidates any attempts by an association to subordinate its super-priority lien to that of a first deed of trust at a foreclosure sale by selling the condominium unit “subject to” a first deed of trust. *See id.* at 879. The trial court directly contradicted this holding in *Liu* in finding that the Association’s notice that “the condo foreclosure sale specifically stated, ‘the property will be sold subject to any prior liens’” controls. *Compare id.*, with App. 228. The record reflects that the Condo Lien included its super-priority lien and accordingly, the Association’s representations that the Condo Sale was “subject to” a first deed of trust are invalid as a matter of law. *See Liu, supra*.

The trial court also incorrectly held that the 2017 amendment to the Condo Act renders *Liu* inapplicable. App. 228-29. The 2017 amendment revised the foreclosure notice provisions to require an association to specify whether it was foreclosing upon a super-priority lien or the junior portion of its condominium lien and subject to a first deed of trust. *See Liu, supra* at 874 n. 2. While the condominium sale that was analyzed in *Liu* occurred prior to the 2017 amendment, it does not change the outcome here. In *Liu*, the association had only the most recent

six months of assessments to foreclose upon, so irrespective of whether the notices specified the type of condominium lien being foreclosed upon, the sale was that of a super-priority lien. *See id.* at 879. Here, while the foreclosure notices for this Condo Sale did not specify which portion of the Condo Lien was being foreclosed upon, the record reflects that the Association was foreclosing upon its entire Condo Lien, which includes the super-priority portion. The 2017 amendment to the Condo Act does not alter the fact that the Association foreclosed on its super-priority lien at the Condo Sale and *Liu*'s clarification of the anti-waiver provision bars preservation of the Deed of Trust as a result of the sale. At bottom, the holding in *Liu* confirms that the Deed of Trust did not survive the Condo Sale irrespective of the Association's representations otherwise.

Finally, the trial court incorrectly held that the holding in *4700 Conn* does not apply to the Condo Sale for the same reason that *Liu* did not apply – because, unlike this Condo Sale, the foreclosure sale analyzed in that case was prior to the 2017 amendment of the Condo Act. App. 228-29. However, this Court has explicitly confirmed the contrary in explaining that it “do[es] not take the 2017 amendment [] as an invitation to revise [their] understanding of § 42-1903.13(a)(2).” *4700 Conn 305 Trust v. Capital One, N.A.*, 193 A.3d 762, 766 (D.C. 2018). The Court rejected the notion that the 2017 amendment of the Condo Act impacts the outcome of a super-priority lien sale.

A proper application of the holding in *4700 Conn* confirms that this Court should reverse the trial court's ruling. In *4700 Conn*, the Court analyzed whether an association could foreclose on more than the most recent six months of assessments owed while relinquishing its super-priority lien, thereby selling the unit subject to the first deed of trust. *See id.* at 765. This Court held that it could not. *Id.* The super-priority portion of the lien may not be waived if an association is foreclosing on more than six months of assessments owed. *See id.* Applying this holding to the Condo Sale, the record reflects that the Association was foreclosing on more than the most recent six months of assessments owed. Accordingly, the Association could not waive its super-priority lien in conducting the Condo Sale, and the Deed of Trust was extinguished as a result of same. *See 4700 Conn, supra; Chase Plaza, supra* at 173.

Based on this Court's binding precedent clarifying the implications of the Condo Act, application of *Chase Plaza* and its progeny are instructive that the trial court's ruling requires reversal.

## CONCLUSION

Over a decade's worth of this Court's precedents confirm that the Condo Sale was that of a super-priority lien, which extinguished the Lender's Deed of Trust. Wonder Twins' purchase of the Property at the Condo Sale was free and clear of all encumbrances. The lower court misinterpreted the Condo Act and this Court's

precedents in ruling otherwise to determine that Housing Trust's claim to title was superior to that of Wonder Twins. The trial court's decision should be reversed.

Respectfully, submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2024, the foregoing document was served on all counsel of record via the Court of Appeals Electronic Filing System.

/s/ Tracy Buck

Tracy Buck

# 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.

/s/ Ian G. Thomas  
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23-CV-719  
Case Number(s)

February 5, 2024  
Date