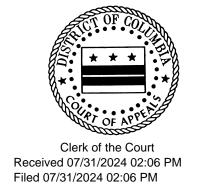
Nos. 23-CV-0832 & No. 24-CV-0045



DISTRICT OF COLUMBIA COURT OF APPEALS

PETER FARINA
Appellant,
v.

JANET KEENAN HOUSING CORPORATION, et al.,
Appellees,

PETER FARINA
Appellant,
v.
JANET KEENAN HOUSING CORPORATON, Appellees

On Appeal from the District of Columbia Superior Court Case Nos. 2022-CA-004492-B and 2022-CA-004492-B

Initial Brief of Peter Farina, Appellant, Pro Se

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Non-governmental Parties To These Appeals

Peter Farina, Intervenor-Appellant, pro se, in No. 23-CV-0832, Appellant, pro se, in No. 24-CV-0045;

Janet Keenan Housing Corporation, represented by attorney Stephen Hessler in both cases below and these appeals.

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I.) Table of Authorities

Cases:

Cabaniss v. Cabaniss, 464 A. 2d 87, 91 (DC 1983)

Family Federation for World Peace v. Moon, 129 A. 3d 234 (DC 2015)*

Glicken v. Bradford, 35 FRD 144, 151 (1964)

Grayson v. AT&T Corporation, 15 A.3d 219, 229-235 (2011)

Greenpeace, Inc. v. Dow Chemical Co., 97 A. 3d 1053, 1061 (DC 2014)

Halbach v. Great-West Life, 561 F. 3d 872, 877 (8th Cir. 2009)

He Depu v. Yahoo! Inc., 950 F. 3d 897,901 (D.C. Cir 2020)

Hooker v. Edes Home, 579 A. 2d 608 (DC 1990)*

In re Estate of Reilly, 933 A. 2d 830, 839 (DC 2007)

Juul v. Rawlings, 153 A. 3d 749 (DC 2017)

Land v. Board of Education, 781 NE 2d 249, 257-8 (III S. Ct. 2002)

McPherson v. DC Housing Authority, 833 A. 2d 991, 995 (D. C. 2003)*

United States Trust Co. v. Commissioner, 296 U.S. 481, 487 (1936)

Walton v. Arizona, 497 U.S. 639, 653 (1990)

Williams v. United States, 311 A. 3d 308, 312-314 (D.C. 2024)

Zanders v. Baker, 207 A. 3d 1129, 1141 (D.C. 2019)

Statutes:

Uniform Trust Code (UTC) 19-1301 et. seq. especially at:

DC Code § 19–1301.03 (13)

DC Code § 19–1301.03 (16)

DC Code § 19–1304.05 (c)

DC Code 19-1304.13

DC Code 19–1310.01(a)

DC Code 19–1310.01(b)(9-10)

Nonprofit Corporations Act (NCA), DC Code 29-401 et. seq. especially at:

DC Code 29-410.03

DC Code 29-412.05(c)

DC Code 42-1101(4)

Rental Housing Conversion and Sale Act 42-3401 et. seq. especially at:

DC Code 42-3401.01-03 (Findings, Purposes, Definitions)

DC Code § 42–3401.03 (17)

DC Code 42-3404 (Tenant Opportunity to Purchase Act ("TOPA"))

DC Code 42-3405.11 (Statutory Construction)

Other Authorities

Superior Court Rules of Civil Procedure especially at: Rule 24 Intervention

II.) Appeals Are From Final Orders

These consolidated appeals are taken from final orders denying Appellant's Motions to Intervene and Reconsider that denial in Case No. 2022-CA-004492-B, District of Columbia v. Janet Keenan Housing Corporation ("JKHC"), hereafter, "the District's case" (Appendix ("App.") Items I. A and C). Additionally, Appellant appeals from Final Orders of Judgement in Case No. 2023-CAB-006168, Peter Farina v. Janet Keenan Housing Corporation, hereafter "the Appellant's case" (App. II.B). These orders dispose all Parties' claims thereby establishing the jurisdiction of this Honorable Court.

III.) <u>Issues for Review</u>

I.) In the District's case

A.) Did the trial court commit reversable errors in denying Appellant's Motion to Intervene, and his Motion to Reconsider that denial, as a matter of right and/or

- "special interest" under the District's Uniform Trust Code ("UTC"), the Tenant Opportunity to Purchase Act (TOPA), or common law (See, *Grayson v. AT&T Corporation*, 15 A.3d 219, 229-235 (2011))?
- B.) Given the court's knowledge of a third-party sales contract for JKHC's property ("Property" or "House" or "VHH"), did the trial court commit reversable error in denying Appellant's motion to intervene, and his motion to reconsider that denial, as a matter of right and/or interest under the District's Tenant Opportunity to Purchase Act ("TOPA")?
- C.) Did the trial court commit reversable error in concluding that sale of JKHC's Property as called for in the Appellees' settlement agreement to a not-tax-exempt buyer with no intention of preserving it for affordable housing, meet the statutory and case law requirements of *cy pres*?
- D.) Did the trial court commit legal or factual errors and/or otherwise abuse its discretion in,
- 1.) Finding without specific evidence that the intended recipient organization of the sale profits is allowable when, according to the District's property tax records, it is not based in the District and does not own any real property in the District?
- 2.) Finding without evidence that the "greater positive impact" for preserving affordable housing in the District (transcript, 09/29/2023, p. 18) would be to allow the sale of JKHC's charitable housing to a not-tax-exempt, for-profit buyer rather

than transfer that housing for the cost of its debts to another District-based nonprofit housing organization?

- 3.) Failed to find, because it did not inquire, whether a "person that is a member or otherwise affiliated with [JKHC would] receive a direct *or indirect* financial benefit in connection with [the] disposition of [JKHC's asset who is not] a charitable corporation or an unincorporated entity that has a charitable purpose (emphasis added)?
- II.) In the Appellant's case,
- A.) Did the trial court legally error in failing to find that Appellant had statutory or common law standing to enforce his breach of trust claim against JKHC?
- B.) Did the trial court legally error in concluding that Appellant's pre-existing TOPA right to match the contract price for JKHC's property was "extinguished by its Consent Order" in the District's case (09/29/2023) under the District's "sale" exemption statute and this Court's analysis of it in *Juul v. Rawlings* (2017)?

IV.) Proceedings and Depositions of the Cases Below

I.) The District's case: In September 2022, the District of Columbia, by and through its Attorney General acting on Appellant's information but not his behalf, brought suit against JKHC for violations of the District's Nonprofit Corporations Act ("NCA") including its intention to sell its charitable housing, and Appellant's home for 33 years, to a private, out-of-town, market-rate buyer against its

corporate purposes and the District's cy pres law without court approval. When Appellant learned his housing might indeed be sold to the contracted buyer through a settlement agreement, he sought to intervene to block the sale and put the house into receivership. The court denied his motion to intervene, his motion to reconsider, and on September 29, 2023, approved the settlement agreement allowing the sale and dismissed the District's case. Appellant timely appealed. II.) Appellant's case: Immediately after filing that appeal, Appellant filed his own action against JKHC for breaches of the District's Uniform Trust Code ("UTC") and Tenant Opportunity to Purchase Act ("TOPA"). He also sought a restraining order on the sale of his housing pending the outcome of his appeal of the District's case. The same court that heard the District's case took Appellant's case initially allowing attorneys for the District to observe the proceeding and engage with the court as requested. Over the next several months, the court conducted a series of hearings, approved motions by appellees to consolidate the cases, and, over Appellant's opposition, expedite a trial on the merits. The relevant results are that the court denied Appellant's request for a restraining order and on January 11, 2024, ruled from the bench against Appellant's claims for breach of the UTC and TOPA. The court summarized its rulings in a written Final Judgement later that day. Appellant again filed a timely appeal.

V.) Facts Relevant to the Issues for Review

The factual background is as recounted by the Attorney General for the District of Columbia in his complaint and supporting exhibits in *District of Columbia v. Janet Keenan Housing Corporation*, 2022-CA-004492-B, September 30, 2022 (the "District's case") that included and arose from Appellant's "Declaration" of October 3, 2022 and, additionally, as Appellant recounts in the "Background" of his Motion to Intervene submitted July 30, 2023.

To summarize those of more significant relevance, Appellant has for over 35 years been a low-income paying tenant (DC Code 42-3401.03 (17) and "head-ofhousehold" of "Victor Howell House" ("VHH"), an unincorporated group of tenants functioning as a single low-cost household for low-income persons in the District of Columbia (the "District" or "DC") at 1304 Euclid St NW, the "Property" (or "House") at the center of these two cases. In 1999 the private owner of the Property indicated his intention to sell it. In early 2000 Appellant met with some volunteers to whom he expressed his intention to have VHH acquired by a new owner that would hold the Property's title and use money that he was paying to the current owner for the benefit of himself and other by preserving VHH as "self-run" affordable housing. With Appellant's consent and participation as an initial director the Janet Keenan Housing Corporation ("JKHC") was formed later in 2000 as a nonprofit charitable business organization in the District receiving soon after 501c3 tax-exempt status from the US Internal Revenue Service ("IRS").

At the end of 2000 JKHC did buy the Property mostly with \$125,000 provided as a conditional grant in the form of forgivable loan from the Enterprise Foundation ("Enterprise") "to acquire the Victor Howell House located at 1304 Euclid Street, N.W., Washington, D.C. ...and... continue its use as...permanent rental housing" (Appellant's case, Pltf. Ex. E, p. 1-2, emphasis added) for individuals "at or below 50% Median Income" that "shall run independently as a self-run household" with Appellant, a low-income tenant himself, acting as "Head-of-Household" (Pltf. Ex. D, "Memorandum of Understanding" (MOU), required for the Enterprise funding, p. 1/9 at I.A.2. and 4., respectively). In or about 2012, JKHC defaulted on and returned \$37,000 of Enterprise's conditional grant (for maintaining poor housing conditions) and entered the other \$88,000 as revenue in its 2012 IRS 990-EZ filing (Appellant's case, Pltf.'s Ex. J, line 8). In 2018, JKHC was cited by the District for numerous housing code violations and took out a \$100,000 loan in 2019 to repair housing code violations, all of which leading to its present financial state. But, rather than transfer the Property for the cost of its debts, currently estimated to be less than \$200,000 (District's Mot. 06/25/24, Tab 7), to another nonprofit willing to preserve its purpose (something it could have done in 2016 when it had no significant debt), JKHC decided in 2022, against its corporate purposes and restrictions, and trust obligations, to sell VHH for profit buyer with no intention of preserving its affordable housing. In September 2022, JKHC and Appellant

exchanged District of Columbia Department of Housing and Community

Development ("DHCD") "Form 1" and "Form 2", (Pltf. Ex. H and B,
respectively). Appellant also learned of the pending closing on the sale of the
House to a for-profit buyer set for October 7, 2022. JKHC did not send Appellant
the required "Written Offer of Sale" as prescribed by DC Code 423404.09(c)(2)(A) by providing him DHCD "Form 3A" ("Offer of Sale and Tenant
Opportunity to Purchase with a Third Party Sale Contract") (Appellant's case,
transcript 12/13/2023, p. 34-35).

As noted above, the District, in its own behalf, forced JKHC into court in late September 2022 when it refused to "stand still" in its sale of VHH pending its review. The court granted the District's motion for stay of the sale that included a stay of Appellant's TOPA rights and process. Many months later, Appellant learned indirectly that the District was likely to approve the Property's sale in a settlement agreement with JKHC. He subsequently filed in July 2023 his "Motion to Intervene" (without a formal complaint form) to stop the sale "for being unlawfully against [JKHC's corporate] purposes, its beneficiaries' interests as well as public interest and policy." (Motion to Intervene, p. 1) That motion was denied by the Trial Court on August 24, 2023 stating that Appellant's Motion did not conform to the Court's Rules of Civil Procedure, was "untimely" and, without explanation, that Appellant lacked standing to intervene. Appellant filed a Motion to

Reconsider on September 18, 2023 which was denied with the Trial Court's Consent Order and dismissal of the District's case September 29, 2023. Appellant filed a timely Notice of Appeal on October 3, 2023.

On October 7, 2023, Appellant filed his own suit against JKHC ("Appellant's case") alleging breaches of the District's Uniform Trust Code or "UTC" (DC Code §§ 19-1301.01 – 19-1311.03) and Tenant Opportunity to Purchase Act or "TOPA" (DC Code §§ 42-3404.01 – 42-3404.14). Included in his complaint was a motion to restrain the sale of the house pending the outcome of his litigation. Appellant's claims against JKHC along with his motion to legally stay the sale of the Property were denied by the Trial Court with its Final Order of January 11, 2024. Appellant filed a timely Notice of Appeal of that order on January 13, 2024. This Court granted Appellant's request to consolidate his appeals on February 11, 2024.

V.) Arguments

Opening Statement

Appellant came to the court seeking to preserve VHH as affordable housing either for himself and others by enforcing the obligations of JKHC that held it in charitable trust or by acquiring the house himself. The court however approved a settlement agreement in the District's case and entered judgements in Appellant's case that negated both of those possibilities. Appellant now seeks this Court's

review and reversal of the lower court's orders for the errors alleged below or any other reason(s) the Court finds in the interest of justice. Toward that end and with apologies for his drafting errors herein he prays the Court construes his arguments as liberally as may be allowed a pro se litigant with no formal training or comparable litigative experience and staff support as Appellees.

Appellant incorporates by reference the District's Complaint of September 30, 2022 and its supporting exhibits. Additionally, he incorporates by reference his July 30, 2023, Motion to Intervene in that case (Exhibit A, below), the court's denial of that motion, Aug. 24, 2023 (App. I.A), his Motion to Reconsider 09/18/2023 (Exhibit B, below), and the court's denial of that motion in its 09/29/2023 Consent Order, App. I.C). Appellant asserts the facts are as recounted in those documents and elsewhere in this Court's record. Of particular importance for purposes of these appeals are the following.

As noted above, Appellant attempted to Intervene in the District's case prior to the Appellees submission of a settlement agreement. The court denied that motion for procedural error (lack of a formal complaint), timeliness, and lack of standing (Order at App. I.A). The court later denied Appellant's Motion to Reconsider that Order without addressing the elements of that motion (Consent Order at App. C). Rather, the court took the position that, in so many words, Appellant should not be given the opportunity to challenge the Property sales

contract because of the financial distress JKHC is in (See App. pdf p. 21). That decision, driven by the Appellees themselves, did result in further litigation with Appellant's suit against JKHC and these appeals. (Appellant informed the court in December 2023 and this Court in previous filings, he is fully prepared to resolve these matters in a manner fully consistent with Appellees' purposes and obligations if they would just let him (see, Mallios Letter, Exhibit E, p. 84 below).

Appellant believes the question of his standing is a threshold issue in both matters and will focus much of his argument below on that subject. Should this Court find Appellant did/does have standing but has questions about the procedural defects or timeliness of his Motion to Intervene, he refers the Court to his answers in his Motion to Reconsider at Exhibit B, p. 48, below.

JKHC was incorporated in the District August 31, 2000, as an IRS 501c3 nonprofit charitable corporation where it is subject to the Nonprofit Corporations Act ("NCA") and "the rules relating to charitable trusts" (*Family Federation v. Hyun Jin Moon*, 129 A. 3d 234, (D. C. 2015) at footnote 15). JKHC's Articles of Incorporation state its "purposes" are to "*preserve* and promote affordable housing in the District of Columbia" (District's Complaint Ex. A, Articles at "third", emphasis added). It's Articles do not say, "provide affordable housing programming" (Consent Order, App. pdf p. 35). Importantly, JKHC's bylaws require that it "shall not be operated for pecuniary gain or profit." (District's

Complaint Ex. E, Bylaws at 2.2.(a)). In 2000, JKHC accepted from the Enterprise Foundation a forgivable loan / conditional grant of \$125,000 "to acquire the Victor Howell House located at 1304 Euclid St NW...to continue its use as...permanent rental housing" for "low-income individuals" (Appellant's case Trial Court Exhibits E, "Enterprise Document" and D, "Memorandum of Understanding", respectively). In 2013, JKHC submitted IRS Form 990-EZ (2012) indicating approximately \$88,000 income due to Enterprise loan being forgiven (Appellant's Trial Court Pltf. Exhibit J). "On September 21, 2022, JKHC entered into a contract for sale of the Property...with a third-party purchaser" (Consent Order 09/29/2023, at A. 6.). This was more than a week prior to the District filing its complaint against JKHC on September 30, 2022. No evidence or indication was given in either proceeding below that the buyer intended to preserve VHH's affordability for low-income adults.

"Public policy encourages the drafting of settlement agreements; *if valid*, they are binding on the parties." (*Gabrielian v. Gabrielian*, 473 A.2d 847, 850 (D.C. 1984), emphasis added). For the reasons given below, Appellant alleges the court's approval of Appellees' invalid settlement agreement erroneously negated his right to enforce the trust obligations of JKHC including the requirements of cy pres, and / or Appellant's TOPA right to match the sale contract price and "taken as a whole, is so unfair on its face as to preclude judicial approval." (*Glicken v.*

Bradford, 35 FRD 144, 151 (1964)). Appellant relies on this Court's knowledge of its own standards of review and wisdom in their application.

A.) The Court Erred in Failing to Find Appellant's Standing

Appellant first challenged the lower court's error regarding his standing in his Motion for Reconsideration (below at Ex. B, p. 57-59).

It well understood that "Trial judges are presumed to know the law and to apply it in making their decisions." (*Walton v. Arizona*, 497 S. Ct. 639, 653 (1990)). What is remarkable about the lower court's reasoning in the District's case the total lack of discussion or even recognition of the facts and law Appellant put before it.

With reference to hearing transcripts excerpted below at Exhibits C and D, the trial court erred in failing to find that Appellant had standing to challenge JKHC's action to not preserve VHH for affordable housing under the District's Uniform Trust Code and relevant caselaw (cited in Exhibits A and B, below) as a JKHC "settlor" who, with others, created and/or contributed "property" to JKHC. Specifically, the court gave no reason for denying standing in either of its rulings on Appellant's motions in the District's case. In the Appellant's case, however, it found that,

Mr. Farina advocated for the formation of the Janet Keenan

Housing Corporation to purchase the property at 1304 Euclid Street, Northwest, and was a former board member of the nonprofit, he is not a creator. He is not a cocreator, incorporator, settlor, trustee, or current board member of the organization nor does he have a possessory interest in the property as those terms are understood under either the Uniform Trust Code or the Nonprofit Corporations Act. (Exhibit D, below, para. 8)

The court erred in concluding Appellant was not a settlor / creator of the JKHC charitable trust. DC Code defines a "Settlor" as "a person...who creates, or contributes property to, a trust" and "property" as "anything that may be the subject of ownership, whether real or personal, legal or equitable, or *any interest therein*. (19-1301.03(16) and (13), respectively, emphasis added.) Additionally, District Code defines "real property" as "every estate or *right*, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District." (DC Code 42-1101(4)).

First, as recognized by the Court of Appeals for the District of Columbia Circuit in *He Depu v. Yahoo! Inc.*, 950 F. 3d 897,901 (D.C. Cir 2020),

"the D.C. Court of Appeals has explained, the elements of a trust are: "1) a trustee, who holds the trust property and is subject to equitable duties to deal with it for the benefit of another; 2) a beneficiary, to whom the trustee owes such duties; [and] 3) the trust property, which is held by the trustee for the beneficiary." *Cabaniss v. Cabaniss*, 464

A.2d 87, 91 (D.C. 1983) (citing, inter alia, RESTATEMENT (SECOND) OF TRUSTS §§ 2, 23, 24, 32)... "As distinguished from a private trust, which is characterized by identified beneficiaries, ... in a charitable trust the obligation of the trustee is to apply the trust res for

some form of public benefit." <u>Hooker v. Edes Home</u>, 579 A.2d 608, 611 (D.C. 1990) (quoting BOGERT ON TRUSTS § 411). [2]

In addition, "there must be proof of the settlor's intention to create a trust." <u>Duggan v. Keto, 554 A.2d 1126, 1133 (D.C. 1989)</u>. This intention to create a trust may be manifested "by written or spoken language or by conduct, in light of all surrounding circumstances." <u>Cabaniss</u>, 464 A.2d at 91. No magic words are required. *Id*.

As indicated in the court records referenced above, and never disputed in the proceedings below, it was with Appellant's intent and consent that JKHC was created with his participation evidenced, in part, by his name appearing as an initial JKHC board member on its Articles of Incorporation that were necessary for JKHC to be incorporated. Further, as JKHC incorporator and initial board member, Julia Morton testified, "our goal was to create a vessel that we could create, in order to maintain -- preserve the Victor Howell House....So the intention of forming JKHC was, specifically, to be that vessel to purchase Victor Howell House so that it could continue to operate in perpetuity." (District's Complaint Ex. A and in Appellant's case, testimony of Julia Morton, 11/01/2023, transcript p. 33-4, respectively). Moreover, Appellant has as "head-of-household" of VHH prior to JKHC's formation effectively acted as its trustee. In Family Federation v. Moon, 129 A. 3d 234 (DC 2015), this Court recognized that,

"The trustee of a trust has the "[p]ower to form a corporation or other entity ... for the purpose of carrying on business or investment activities of the trust" citing Restatement (Third) of Trusts § 86 cmt. e (2007)." (Family, at 246)

Second, the trial court was well aware of Appellant's tenancy at VHH predating JKHC's formation. Appellant argued in the closing of his case that his preexisting "possessory interest" in VHH is the property he deliberately entrusted to JKHC. As this Court recognized in *Greenpeace*, *Inc.* v. *Dow Chemical Co.*, 97 A. 3d 1053, 1061 (DC 2014),

"A "possessory interest" is defined as "[t]he present right to control property, including the right to exclude others, by a person who is not necessarily the owner." Black's Law Dictionary 1203 (8th ed.2004)".

Additionally,

"One could not delegate a right or privilege to another unless one was "vested" with the right in the first place. For example, a ... property owner is vested with the right to exclude others from his property by virtue of ownership in fee simple, but may delegate that right to another by granting a lease." *Land v. Board of Educ. of City of Chicago*, 781 NE 2d 249, 258 (III S. Ct. 2002)

"A "vested right" is commonly defined as a "right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." *Black's Law Dictionary* 1349 (8th ed. 2004) *Halbach v. Great-West Life & Annuity Ins. Co.*, 561 F. 3d 872, 877 (8th Cir. 20009); See also, "Black's Law Dictionary 1323 (7th ed.1999) (defining "right" as a "power, privilege, or immunity secured to a person by law")" *Land v. Board of Educ. of City of Chicago*, 781 NE 2d 249, 257-8 (III S. Ct. 2002)

"Any vested property right, including an undivided interest, may constitute the corpus of a trust;" (*United States Trust Co. v. Commissioner*, 296 U.S. 481, 487 (1936) Original publication copy at https://www.loc.gov/item/usrep296481/

DC Code § 19–1304.05 (c) states that "The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust." In Family, this Court recognized that charitable corporations, like JKHC, are subject to the "rules of charitable trusts" (Family, footnote 15) and in that case identified certain parties as "among others" with "special interest" standing to enforce the purposes of the charitable corporation (*Family*, 244-247). Likewise, Appellant contends the trial court erred in failing to find his standing on similar grounds as those cited in Family. First, the court erred in concluding that Appellant was neither a creator or cocreator when his name clearing appears on JKHC founding document necessary of incorporation. Second, though Appellant was not an incorporator, such a requirement is not necessary to form a trust (DC Code 19–1304.02. Requirements and Cabaniss v. Cabaniss, 464 A. 2d 87, 91 (DC 1983)). Third, though it has been over twenty years since Appellant was ousted as a JKHC director, he like those ousted directors in the Family matter, retains a special interest in holding JKHC accountable to its obligations there being no statute of limitations that Appellant can find that would bar him on that basis. Fourth, given VHH's "collaborative" relationship to JKHC expressed in the Memorandum of Understanding between the entities ("MOU", trial court Exhibit D, p. 1/9), and Appellant's position and responsibilities as "Head-of-Household" expressed therein, the court erred in failing to find Appellant's had standing like that of the Japanese Church in *Family*.

Like the Japanese Church, Appellant made monthly payments from VHH to JKHC with the "understanding", expressed by the MOU and implied, that it was to be used for VHH's preservation and in these particular circumstances gives Appellant standing to enforce that purpose.

In addition to the foregoing, or alternatively, Appellant contends the court erred in failing to find his "special interest" standing as a direct and identifiable beneficiary of the centrally located affordable housing at VHH. Comparing VHH to that of the Edes Home in this Court's decision in *Hooker v. Edes Home*, 579 A.2d 608 (D.C.1990), the lower court stated,

"I further find that Mr. Farina is neither an intended or present beneficiary of the Janet Keenan Housing Corporation pursuant to the rationale articulated by the D.C. Court of Appeals holding in *Hooker vs. Edes Home...*

As I indicated during the course of the evidentiary hearing, I find that that case is readily distinguishable from the instant situation. In that case, the trust at issue was specifically created for the purpose of maintaining a free home for aged and indigent widows residing in Georgetown...

Here as we've discussed at length, nothing in the Janet Keenan Housing Corporation articles of incorporation tie the mission of the organization to 1304 Euclid Street, Northwest, or to the Victor Howell House. Instead, the nonprofit was incorporated with a broad mission to preserve and promote affordable housing in the District of Columbia" (Exhibit D, below, para. 12-15)

While it may be true that neither the VHH name or address appear in JKHC's Articles, the court fail to recognize two dispositive facts: The testimony

of JKHC initial board member and incorporator, Julia Morton (see JKHC Articles of Incorp., District's Complaint Exhibit A) and the express language of the Enterprise Foundation's loan / grant approval letter (trial court exhibit E). As noted above, Ms. Morton testified that, "our goal was to create a vessel that we could create, in order to maintain -- preserve the Victor Howell House....So the intention of forming JKHC was, specifically, to be that vessel to purchase Victor Howell House so that it could continue to operate in perpetuity." (Appellant's case, testimony of Julia Morton, 11/01/2023, transcript p. 33-4). Moreover, the court did not provide any law indicating that the VHH address must appear in JKHC's Articles. And, as also noted above, in 2000, JKHC accepted from the Enterprise Foundation a forgivable loan / conditional grant of \$125,000 "to acquire the Victor Howell House located at 1304 Euclid St NW...to continue its use as...permanent rental housing" for "low-income individuals" (Appellant's case Trial Court Exhibits E, "Enterprise Document" and D, "Memorandum of Understanding", respectively). In 2013, JKHC submitted IRS Form 990-EZ (2012) indicating approximately \$88,000 income due to Enterprise loan being forgiven (Appellant's Trial Court Pltf. Exhibit J (JKHC defaulted on and returned \$37,000)).

Beyond these fact-finding errors is also the court's failure to recognize

Enterprise's conditional loan / grant to JKHC to preserve "permanent" affordable

housing at VHH constitutes the creation of an express trust as described by this Court in *In re Estate of Reilly*, 933 A. 2d 830, 839 (DC 2007),

"Express trusts are created when the settlor manifests an intent to place trust property in the hands of the trustee for the benefit of another, and the settlor must use written words to express her intentions if she wants the trustee to be bound. See RESTATEMENT (SECOND) OF TRUSTS § 17 (1959)."

Or, alternatively, a resulting trust as this Court has described in *Zanders v. Baker*, 207 A. 3d 1129, 1141 (D.C. 2019),

("A resulting trust is a property relationship designed to effectuate the parties' intent when one party takes title to property for which another has furnished the consideration." *Edwards v. Woods*, 385 A.2d 780, 783 (D.C. 1978). Such a trust ordinarily arises in favor of a person who pays the purchase price "[w]hen a transfer of property is made to one person and the purchase price is paid by another." *Leeks v. Leeks*, 570 A.2d 271, 274 (D.C. 1989). "A resulting trust does not arise where a transfer of property is made to one person and the purchase price is paid by another, if the person by whom the purchase price is paid manifests an intention that no resulting trust should arise." Restatement (Second) of Trusts § 441 (1959); *see also Leeks*, 570 A.2d at 275 (citing § 441 of the Restatement).)

Thus, the legal conclusions in *Hooker* of Mary Hooker's standing are applicable here. In that case, the "Edes House" was "erect[ed]" at 2929 N St NW by the "Edes Home" charitable trust with money provided to the "Home" by Margaret Edes for the intended use of the "House" for the benefit of indigent Georgetown widows. Here, Enterprise put up the money for JKHC "to acquire the Victor Howell House located at 1304 Euclid St NW...to continue its use

as...permanent rental housing" for "low-income individuals" and so it cannot be said that it "manifest[ed] an intention that no resulting trust should arise."

And, just as Margaret Edes did not participate in that case, neither did Enterprise make an appearance in this litigation. Nonetheless, probably the most relevant distinguishing feature between the *Hooker* and these instant cases is that Mary Hooker was granted "special interest" standing even though she was not a named beneficiary in Margaret Edes' will or even an actual resident of the Edes House. In this matter Appellant who has also sought "special interest" beneficiary standing, is not only a named creator of JKHC, he is the named "Head-of-Household" at VHH in Enterprises funding documents (MOU, trial court exhibit D, p. 1/9) and a 35-year resident of VHH.

Finally, as an alternative basis for standing and discussed further below, the court erred when it failed to find that that Appellant's "vested" TOPA right to match third party contract price for VHH is, like his possessory interest, a form of "property" (See, citations p. 15, 17-18, above) that, unlike his possessory interest, it was created by JKHC in contracting with the would-be buyer. As such it becomes an asset of JKHC for which it has a fiduciary duty to administer for the benefit of the Appellant. ("Any vested property right, including an undivided interest, may constitute the corpus of a trust;" *United States Trust Co. v.*

Commissioner, 296 U.S. 481,487 (1936) at https://www.loc.gov/item/usrep296481/).

B.) The Court Erred in Concluding the Cy Pres Law Fulfilled

Appellant incorporates by reference "Consent Order" 09/29/2023, and hearing transcript (Appendix Items B and C). JKHC was founded by Appellant's consent and participation specifically for the purpose of acquiring VHH to "continue its use as...permanent rental housing" for low-income adults (Enterprise Foundation Court Ex. E, p. 1) and broadly "to preserve and promote affordable housing in the District of Columbia" (JKHC Articles of Incorporation). JKHC's bylaws require that it "shall not be operated for pecuniary gain or profit." (District's Mot. Tab 5, Bylaws at 2.2.(a)). At no time did Appellant or anyone else involved in the creation of and contributions to JKHC that resulted in the acquisition of VHH express any intention that VHH should ever be put back on the open market regardless of how the profits from such a sale were to be used. In fact, as just noted, JKHC's corporate purpose is to "preserve" any affordable housing it has or becomes involved with, including VHH.

The District's affordable housing policy is "[t]o *preserve* rental housing which can be afforded by lower income tenants in the District" (DC Code 42–

3401.02(2), emphasis added) because "[t]here is a continuing housing crisis" due to "a severe shortage of rental housing available to the citizens of the District of Columbia" (DC Code 42–3401.01(a)(1) and (2), respectively).

"[T]he word "preserve" is defined as "to keep safe from injury, harm or destruction; to keep alive, intact, in existence or from decay; to keep or save from decomposition." Webster's Third New International Dictionary 1794 (1961).

Citation is also made to two cases in which similar language is construed. See *Reed v. Central National Bank of Alva*, 421 F.2d 113 (10th Cir. 1970); *Bookout v. Atlas Financial Corp.*, 395 F.Supp. 1338 (N.D.Ga.1974)." (*United States v. Stone*, 530 F. Supp. 1373, 1377 (D.C. Del. 1982).

JKHC has not disputed that it has a contract for sale of VHH that is 1.) to a third party with no intention of preserving the Property / VHH for affordable housing, and 2.) for the market-rate amount which is hundreds of thousands of dollars more than necessary to pays its debts for dissolution.

Under the settlement agreement approved in the District's case excess funds from the sale of VHH left over after JKHC's debts were paid would be given to "VOACC" for its "District affordable housing programming", not to "preserve" affordable housing, and an "option" for VHH residents to relocate to a "VOACC property" for at least one year. (Consent Order 09/29/2023, para. B.12-13).

The District's Nonprofit Corporations Act ("NCA") states at 29–410.03,

- (a) Property held in trust or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by a transaction described in § 29-410.01 or § 29-410.02 unless the nonprofit corporation obtains an appropriate order from the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (b) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with a disposition of assets unless the person is a charitable corporation or an unincorporated entity that has a charitable purpose.

The District's Uniform Trust Code ("UTC") states at 19–1304.13,

Except as otherwise provided in the terms of the trust, if a particular charitable purpose is or becomes unlawful, impracticable, impossible to achieve, or wasteful:

- (1) The trust does not fail, in whole or in part;
- (2) The trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

The District asserted in its case filing of October 25, 2022, that,

"JKHC' s intentions to sell the Property to a private buyer (if the sale is allowed to proceed) are inconsistent with the doctrine of cy pres relief, i.e., that any diversion of an asset from its existing charitable purpose *must hew as closely as possible to the asset's original purpose*. JKHC has proffered no evidence that the contracted buyer will use the Property to advance JKHC's purpose" (emphasis added).

VHH is the only charitable asset JKHC owns. Any profits it could obtain are not a current asset but instead only an aspiration. Clearly, selling VHH to a private

buyer with no intention of preserving its affordability is not only as far as possible against JKHC purposes, obligations, and District policy, it is the very action that worsens the District's affordable housing crisis!

Appellant contends that, given the information it had from the Appellees and Appellant (in his Motions to Intervene and Reconsider), the trial court erred in concluding that Appellee's settlement agreement in the District's case met the requirements of the District's preservation of affordable housing and cy pres laws when,

- 1.) It made no inquiry into the intentions of the settlors of JKHC and its purpose for acquiring VHH (In Appellant's case, Julia Morton, a professional affordable housing developer, and a JKHC incorporator and founding director, stated, "our goal was to create a vessel that we could create, in order to maintain -- preserve the Victor Howell House....So the intention of forming JKHC was, specifically, to be that vessel to purchase Victor Howell House so that it could continue to operate in perpetuity." (testimony of Julia Morton, 11/01/2023, transcript p. 33-4).
- 2.) It made no inquiry or fact finding of financial negligence by JKHC (such as why it operated for more than 20 years without a property tax exemption? Or, what efforts it made to raise funds for repairs prior to taking out a \$100,000 loan

against VHH? Or, why a smaller loan could not have been acquired if it was necessary?);

- 3.) Concluded without any independently verifiable evidence that selling the VHH to a private buyer and donating the profits would have a "greater positive impact... for residents throughout the District of Columbia who are facing housing shortages and difficulty in securing affordable housing". (hearing 09/29/2023, transcript p. 18). Such evidence would have to show that the loss of an already very affordable multi-room property (if transferred for only the cost of JKHC's debts) would have to be more than made up with what the profits from the sale could buy to replace it. In Appellant's case, a long-time affordable housing developer, Julia Morton, testified that "[t]he impact of preserving the affordable housing [at VHH] ... is much more valuable than liquidating it. ... The bigger impact is to maintain the housing." (Appellant's case, testimony of Julia Morton, 11/07/2023, transcript p. 57);
- 4.) It failed to specifically find that preserving VHH under different nonprofit ownership would be "unlawful, impracticable, impossible to achieve, or wasteful";
- 5.) It failed to inquire if "A person that is a member or otherwise affiliated with [JKHC would] receive a direct *or indirect* financial benefit in connection with a disposition of [JKHC's] assets unless the person is a charitable corporation or an

unincorporated entity that has a charitable purpose" (emphasis added). It is
Appellant's information or belief that JKHC trustee, Harry Quiett, is or was a longtime employee of VOACC's parent organization, Volunteers of America ("VOA")

(See, https://www.facebook.com/hquiett/ "Work Vice President at Volunteers of
America 2000 - Present Alexandria, Virginia). VOA's latest financial report
indicates it shares money with VOACC, including a common pension fund, "The
Volunteers of America National Pension Plan" ("Volunteers of America, Inc. and
Subsidiaries Consolidated Financial Statements and Supplementary Information
June 30, 2023 and 2022" at https://www.voa.org/financial-health/ (2023))

6.) It concluded without specific fact-finding that giving the profits from contracted sale of VHH to VOACC would go to actually preserving affordable housing in the District when no specific District addresses were indicated in the settlement agreement hearing or the Consent Order (hearing transcript 09-29-2023, Consent Order at Appendix 1). In fact, VOACC, based in Lanham, Maryland, owns no property in the District according to its own website (https://www.voachesapeake.org/) and the District's property tax data base (https://opendata.dc.gov/datasets/integrated-tax-system-public-extract/explore?showTable=true). Which raises the question, how can the requirement that the sale's profit be used to preserve affordable housing in the District if its intended recipient does not own any?

C.) The Court Erred in Failing to Uphold Appellant's Vested TOPA Right

Given the existence of a third-party sales contract for JKHC's Property, the trial court erred in the District's case in failing to find, or even inquire (transcript App. I.B), that as a matter of law Appellant had a "vested" property right under the District's TOPA to match JKHC's sales contract prior to the commencement of that case and to safe guard that right in its Consent Order (Order App. I.C). In doing so, the court erred in failing to acknowledge that the TOPA at 42-3404.07 precludes JKHC from negating Appellant's TOPA rights specifically indicating that,

"An owner shall not request, and a tenant may not grant, a waiver of the right to receive an offer of sale under this subchapter. An owner shall not require waiver of any other right under this subchapter except in exchange for consideration which the tenant, in the tenant's sole discretion, finds acceptable."

The court compounded those errors in Appellant's case by deeming his acknowledged right to match "extinguished" by its Consent Order citing DC Code 42-3404.02(c)(2)(M) (hereafter, "exemption statute" or "M") and this Court's decision in *Juul v. Rawlings*, 153 A. 3d 749 (DC 2017). Specifically, the court stated,

"D.C. Code 42-3404.02(c)(2)(M) explicitly exempts a transfer of property pursuant to court order or a court-approved settlement agreement from the definition of a sale under TOPA. *If there is no sale*

as defined by statute, the owner of the property is not required to provide any tenants with an opportunity to purchase the property (emphasis added).

Thus, with the issuance of the September 29th, 2023 order approving the consent settlement agreement, the property was exempted from the requirements of TOPA.

To the extent that there was any question about the applicability of the statutory exemption to the current situation, the D.C. Court of Appeals ruling in *Juul vs. Rawlings*, at 153 A.3d 749, decided in 2017, in which the Appellate Court affirmed the lower court ruling that the subsequent approval and enforcement of a consent settlement agreement exempted the transfer of the property from TOPA clearly resolves this question." (transcript, App. pdf p. 50-51)

Except that it did not. The court failed to recognize the sale of VHH as one "defined by statute" evidenced by the third-party contract ratified prior to the start of the District's litigation. If that sale did not pre-exist the Consent Order it could not have been "extinguished" by it. The court's error arises from its misapplication of the *Juul* decision to Appellant's TOPA claim.

As the basis for concluding that its Consent Order extinguished Appellant's right to match the contract price, the trial court relied exclusively *Juul* and in particular this Court's observation therein that "the TOPA statute does not specify when a trial court order must be rendered in connection with a transfer of property to be exempt from the definition of a "sale"" (transcript 01/11/24 p. 58, citing *Juul* p. 757) deliberately leaving out the rest of that sentence, "and thus does not preclude our holding today." It also failed to acknowledge the accompanying footnote 4 where this Court stated,

"[It] is apparent from the record that the tenants' TOPA rights had not vested at the time the tenants "transferred" those rights to Ms. Juul. TOPA "rights" only vest upon the execution of an agreement that meets the statutory definition of a "sell" or "sale."" (*Juul* at 757 and 758, respectively).

Crucially, what the trial court also failed to acknowledge in *Juul* was this Court's finding that, "No contract had been executed between Mr. Juul and Ms. Rawlings and any third-party buyers at the time" they signed their two settlements, the second extending the first, to enter into a sales contract for their property after that court "dismissed the case "pursuant to the settlement agreement," (Juul at 755). While it is facially true that the *Juul* trial court entered a subsequent order after the sales contract was ratified, it was an order enforcing the settlement agreement that pre-existed the sales contract thereby exempting that "sale" from the TOPA and precluding the "vesting" of TOPA rights. As this Court stated in Juul (p. 758), "As the [TOPA] makes clear, a tenant's potential right of first refusal is not so absolute that it may interfere with ... the court's authority to enforce ... settlement agreements." (emphasis added). Thus, the distinguishing feature between Juul and Appellant's TOPA claim before the lower court is that Appellant had an actual "vested" pre-settlement right to first refusal / match the offer. As the Court indicated in Juul, settlement agreements are encouraged only so long as they don't "interfer[e] with an owner's property right" (Juul, at 755) including in these cases Appellant's TOPA rights.

The trial court's exclusive and erroneous reliance on *Juul* does not completely resolve the question of whether or not the exemption statute M is nonetheless applicable to the sale of VHH in these matters. That question is, under what circumstances can a TOPA-defined "sale" that becomes the subject of a court proceeding be subsequently deemed by the court a "transfer" exempt from the TOPA? The short answer is, none. (See, *Williams v. United States*, 311 A. 3d 308, 312-314 (D.C. 2024), describing the standards for statute review).

The statute M reads in its entirety, "A transfer pursuant to court order or court-approved settlement;". Viewed in isolation, M is clearly vague (transfer of what?) and overbroad considering how many court orders or approved settlements involve transfers of property (or people). Relying on it alone could lead to bizarre results as Appellant informed the court in his closing arguments ("suppose the Court had ordered that my TOPA rights be recognized and I be allowed to exercise them with the fact that, nonetheless, the process was approved -- was a part of a court-approved settlement, would that except [sic] those rights?" (January 11, 2024 Tr. at p. 14)). Relying on Juul the way it did, the court gave no consideration to this question.

Obviously, paragraph M, with the word "transfer" and not "sale", must be read in the context of the broader TOPA statute in which it appears if it is to have

any substantive meaning. It is a central fact of the cases that JKHC had executed a third-party contract of sale for 1304 Euclid St. prior to the filing of the District's complaint that met the requirements of a "sale" described at D.C. Code 42-3404.02(b). The answer to the applicability of M must come from a comparison to the other 16 categories described in DC Code 42-3404.02(c) (at (A) through (Q) including (H-i) and minus (M)). A review of each of these finds no comparable match to the JKHC sale. The only one that comes close is at "(G)" ("Any transfer of a property directly caused by a change in the form of the entity owning the property; provided, that the transfer is without consideration," (emphasis added)). Under the Consent Order JKHC is clearly going to change form from existent to nonexistent and must 'dispose' of its Property in a manner that pays its debts (as noted above JKHC's bylaw prohibits doing so for profit). However, because JKHC intends to do so for a sum of money far in excess of its debts, paragraph (G) supports the finding that JKHC's "sale" for a consideration is not an exemptible "transfer". The trial court erroneously ignored this argument after Appellant specifically made it in his closing arguments (January 11, 2024 Tr. at p. 15).

Finally, as note above, Appellant's vested TOPA right is a form of "property" created by JKHC in contracting with the would-be buyer (See, 19–1301.03 (13) "Property" above). As such, that property becomes an asset of JKHC for which it has a fiduciary duty to administer for the benefit of the Appellant. ("Any vested

property right, including an undivided interest, may constitute the corpus of a trust;" *United States Trust Co. v. Commissioner*, 296 U.S. 481,487 (1936) at https://www.loc.gov/item/usrep296481/). In other words, the trial erred in failing to find that JKHC, not only had no authority to contract away his TOPA rights in its settlement agreement with the District, it had an affirmative obligation, a fiduciary duty, to properly "dispose" of that asset as part of its dissolution in accordance with applicable law and policy. If there is any uncertainty, DC Code 42-3405.11 states,

"The purposes of this chapter favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law. If this chapter conflicts with another provision of law of general applicability, the provisions of this chapter control."

Prayer for Relief

For any or all of the foregoing reasons, or others the Court may find just and equitable, Appellant respectfully requests the Court reverse all Orders in both cases appealed here and remand with instructions consistent with the findings of the Court so that he may continue his 35-year effort to preserve and provide desperately needed affordable housing at Victor Howell House.

July 31, 2024

Submitted by,

/s/ Peter Farina
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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2024, a copy of the forgoing *Initial Brief of Peter Farina, Appellant, Pro Se* was filed and served on counsel of record via the Court's Appellate E-Filing System.

/s/ Peter Farina

Peter Farina, Appellant, pro se 1304 Euclid St NW Washington DC 20009 202-351-8299 petefarina@verizon.net

Exhibit A

(Appellant's Motion to Intervene, filed July 30, 2023)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA Civil Division

DISTRICT OF COLUMBIA,

a municipal corporation,

Plaintiff,

Case No.: 2022 CA 004492 B

٧.

Judge Juliet J. McKenna

JANET KEENAN HOUSING CORPORATION,

Defendant.

MOTION TO INTERVENE

Comes now the undersigned Petitioner, pro se, Peter Farina, pursuant to this Court's Rule 24 of Civil Procedure ("Intervention") to request the its permission to intervene in this action as a matter of right because his beneficial interest, and that of other similarly situated persons, in residing affordably at the subject Property is being harmed by the on-going actions of the Defendant, Janet Keenan Housing Corporation ("JKHC" or "Defendant"), and threatened by the pending action of the Plaintiff, District of Columbia (the "District" or "Plaintiff"), by and through its Attorney General ("AG"). Specifically, settlement talks between the parties appear to be based on the presumed validity of the contract for sale of the Property between JKHC and the non-501c3 market-rate buyer. Petitioner seeks the Court's ruling, initially, that the contract is void, *ab initio*, for being unlawfully against JKHC purposes, its beneficiaries' interests as well as public interest and policy. Support for granting this request can be found in statute at DC Code 19–1304.05(c) and this Court's rulings in in *McPherson v. DC Housing Authority*, 833 A.

2d 991, 995 (D. C. 2003) and *Hooker v. Edes Home*, 579 A. 2d 608,613-616 (D. C. 1990)

BACKGROUND

The following statements are, on information or belief, true to the best of Petitioner's knowledge and are in addition to those he made in the District's earlier filing in this case (Docket Entry 10/03/2022, "Additional eFiling Document", "Declaration of Peter Farina").

The Property at the center of this matter is located at 1304 Euclid St. NW Washington DC. In 1983 the Property was rented from the private owner, Steven Liapis ("Mr. Liapis"), by a group of homeless supporters who called the Property "Victor Howell House" ("VHH" or the "Household", District's Exhibit 1) in honor of Victor Howell, a long-time activist in the Columbia Heights neighborhood. VHH has functioned as an unincorporated association providing respite and low-cost housing to people with low and often no income through the year 2000.

Since 1989 Petitioner has for 34 years been a low-income tenant of the Property where he has maintained VHH's mission serving other low- and no-income people.

In late 1999 early 2000, Mr. Liapis, a retiree who generally sympathized with the work of VHH, indicated he wanted to sell the Property and began taking steps to do so.

In early to mid-2000, Petitioner was invited to a meeting of affordable housing supporters at the All Souls Church Unitarian ("ASCU"). After discussing VHH's need for a new property owner that would maintain its mission, Petitioner entered into an oral agreement with some members of that group to form a new 501c3 nonprofit to be named in memory of Janet Keenan, who had been an active member of ASCU and the All Souls Housing Corporation, a nonprofit based at the church.

The stated and specific purpose of forming JKHC was to save and support VHH by acquiring the title to the Property in order to accept, hold, and use the money paid by Property residents to preserve it as affordable housing for then current and future residents, and, generally, as stated in JKHC's Articles of Incorporation (District's Exhibit A), "to preserve and promote affordable housing in the District of Columbia."

JKHC's founding board of directors consisted of two family members of the late Janet Keenan (her daughter and son-in-law), three family friends, and Petitioner (District's Exhibit A). Janet's son and his wife joined the board soon after JKHC's founding as did one other friend of the family.

In mid to late 2000, JKHC applied for a loan from the Enterprise Foundation ("EF") to acquire and renovate the Property. As part of the application package, EF required a lease or 'program agreement' between JKHC and the Property residents. A "lease" was submitted as a "Memorandum of Understanding" ("MOU") setting out the terms of the "collaborative" relationship between JKHC and the VHH "Household" for preserving affordable housing at the Property for an undefined term (District's Exhibit 1, pdf p. 10).

Soon after that EF approved a \$125,000 loan with \$5000 of that to replace the house roof and the remainder put towards the Property's purchase price of \$140,000 (District's Exhibit D). JKHC had to raise the \$20,000 difference which it did when one or more members of JKHC's initial board donated it from personal funds (Mr. Liapis also reduced his original asking price by \$20,000).

It is unlikely that the EF money would have been loaned to JKHC were it not for Petitioner's knowledge of the existence of that funding source and, critically, his efforts (with the help of his low-income housemates and others in the community) to maintain the affordability of the housing at the Property in the years prior to JKHC's formation. The EF loan would be forgiven in installments, that is, no repayment would be due EF, so long as JKHC maintained the Property in good condition as affordable housing over the life of the loan.

In all the time leading up to the transfer of the Property there was no discussion about the District's Tenant Opportunity to Purchase Act ("TOPA") requirements. Consequently, no notices were sent to the Property's tenants, nor were their TOPA rights signed over to JKHC. Rather than forming and incorporating a VHH tenant association with a resident board of directors, VHH effectively incorporated itself by and through JKHC with non-resident volunteers serving as its board of trustees, the one exception to that group being the Petitioner.

Within about the first two years of JKHC acquiring the Property several notable events occurred beginning with JKHC's only application for property tax exemption being denied. Then its board in a surprise move voted to remove for no

substantial reason one of its original incorporators who was herself a professional nonprofit housing developer (Petitioner excepted). Sometime later the board in another surprise action voted to remove the Petitioner, claiming for the first time and without reference to law or guideline, that he had a "conflict of interest" by living at the Property.

Over the following years, communication between JKHC and Petitioner was remote and strained. There was little talk of repair work needed at the house except that which Petitioner did himself.

This led in 2011 to JKHC having to return about \$37,000 of the original \$125,000 loan when EF inspected the Property and found it in very poor condition because JKHC had failed to do any substantial repairs with the money it had accumulated from Property residents (minus property taxes and Property water bill payments).

In 2013 JKHC finally did do significant work at the Property when it fully renovated three bathrooms and replaced the windows on the front of the house. It was during this time that a JKHC board member, Janet Keenan's daughter, told Petitioner in an abrupt phone call that, "If it was up to me, I'd have the house condemned and all of you thrown out." Two subsequent meetings with her husband and brother, both JKHC board members, failed to produce a meaningful apology or any apparent change in attitude towards the house or Household.

In 2016, JKHC informed Petitioner of its intention to sell the Property. It initiated talks with the Petitioner aimed at having the Petitioner find a buyer, acceptable to JKHC, that would maintain its affordable housing. JKHC representatives refused to say how much it wanted for the Property. This discussion ended some weeks later when Petitioner learned that JKHC wanted market rate for the Property, something that would have unnecessarily and dramatically undermined its affordable housing thereby going against the purposes for which JKHC was founded.

In 2018 JKHC was notified of numerous housing code violations for which it hired a no-bid contractor to mitigate. One of the violations cited was the lack of direct egress from the basement bedroom Petitioner had been using for the previous 18 years. But rather than spend the small amount to provide the egress that Petitioner wanted, JKHC decided to close the room to him thereby reducing the JKHC's, and VHH's, ability to provide affordable housing.

In 2019 JKHC took out a \$100,000 loan against the Property from National Capital Bank ("NCB") to pay for the property repairs and other expected expenses. It is believed that some, if not all, of this loan is still outstanding (DC Recorder of Deeds online documents recorded 05/28/2019-06/05/2019 for Square 2866 Lot 0057).

It is doubtful that loan would have been necessary if, in over 20 years, JKHC had not failed to obtain any form of property tax relief from the District or other funding for repairs. Petitioner estimates that out of \$355,000 paid to JKHC by Property residents since 2001, approximately \$100,000 in property taxes have been paid to the District (based on an estimated average property tax bill of \$5000 per year for the last 20 years). Petitioner does not know if JKHC ever obtained exemptions from the District's Sales and Use Tax, Franchise Tax, and Personal Property Tax or whether JKHC received, or even sought, any other financial support, beyond Property residents' money, over the same period.

For nearly 20 years JKHC operated without a business license or bothered to register the Property with DHCD's Rental Accommodations Division.

In middle of 2022, JKHC representatives, Janet Keenan's son and daughter, met with VHH residents at the Property to discuss JKHC efforts to sell the Property. It was in this meeting that the president of JKHC, Janet Keenan's son, made the truly absurd statement that if they, the VHH residents, wished to buy the Property entrusted to JKHC by and for VHH residents, then they would have to pay "one million dollars" for it, a price about \$200,000 above market estimates!

In September 2022, despite being notified in writing by the Petitioner of the statutory Court approval required for diversion of a charitable asset, JKHC contracted with a non-501c3 entity to buy the Property at market rate (believed to be about \$750,000) and indicated that the buyer intended to personally and immediately occupy the Property. Closing of the sale was scheduled for early October. Petitioner notified the District of the pending sale and its AG quickly brought this matter into the Court.

Rather than spending Property residents' money on needed house repairs, especially its roof, as originally agreed to, JKHC has chosen to waste those funds defending its sales contract that, as argued below, is unlawful as against its

corporate purposes, beneficiaries' interests, and the District's public interests and policy.

If the transfer of the Property as JKHC intends is approved, the charitable purpose and affordable housing at the Property will be eliminated for the Petitioner, his low-income housemates, and potentially scores of future low-income people of the District who could live there (see also the District's Complaint). Nonetheless, the AG's attorneys are presently in settlement talks with JKHC aimed at approving the Property's market-rate sale to the contracted buyer so long as certain other legal conditions are met with money received from the sale that is in excess of JKHC's financial liabilities. JKHC's debts are believed to be far less that the amount of the sales contract on the Property, possibly by more than \$500,000.

ARGUMENT AND AUTHORITIES

The District has had for decades what many of its leaders and residents call an "affordable housing crisis." It has recognized in statute the "severe [and "growing"] shortage" of affordable rental housing that is "felt most acutely among low- and moderate-income renters" (DC Code 42-3501.01) and stated its public policy "[t]o protect low- and moderate-income tenants from the erosion of their income from increased housing costs" (DC Code 42–3501.02). Numerous other District laws have been passed to study, produce, and maintain affordable housing. And, yet the crisis persists with devastating effects on the health and longevity of thousands of low-income District residents struggling to also meet their other needs of food, security, healthcare, transportation, and employment

JKHC was formed by agreement with the Petitioner and non-resident volunteers to address this crisis by specifically preserving the affordable housing that was being provided by the VHH Household at the Property and, in general, "to preserve and promote affordable housing" throughout the District.

The unique circumstances and purposes, specific and general, by and for which JKHC was founded require it to act in all ways within its power to preserve and promote the *affordability* of housing, including at the Property, for the benefit of then current and future Property residents. In other words, JKHC was founded to be, and in the eyes of the law is, a charitable trust, one that provides a real financial benefit to its beneficiaries in the form of money they otherwise would have to spend on more expensive housing.

That JKHC is a charitable trust is indicated in the District's complaint where it notes DC Code Sec. 29-410.03(a) "Property held in trust or otherwise dedicated to a charitable purpose shall not be diverted from its purpose ... unless the nonprofit corporation obtains an appropriate order from the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets." (compl. para. 17 and 49).

Additionally, JKHC being a 501c3 charitable corporation, this Court has "recognized the applicability of the rules relating to charitable trusts to such corporations" (*Family Federation v. Hyun Jin Moon*, 129 A. 3d 234, (D. C. 2015) at footnote 15). These rules are found in the common law and codified in the District's Uniform Trust Code ("UTC") (DC Code §§19-1301.01–1311.03). The UTC has its own cy pres provision at Sec. 19–1304.13 which states at "(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the *settlor's* charitable purposes" (emphasis added). DC Code defines "settlor" as "a person ... who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor ..." (DC Code 19–1301.03(16)).

Furthermore, IRS guidelines state, "The cy pres doctrine is a principle of law that courts use to save a charitable trust from failing when a charitable objective is originally or later becomes impossible or impracticable to fulfill. ... This legal doctrine is based on the theory that a court has the power to revise a charitable trust where *the maker (also called the creator, [or] settlor...)* had a charitable intent..." (IRS eotopice81, p.2, emphasis added)

Under the UTC JKHC's board of trustees "shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries" (19–1308.01); and, "[each] trustee shall administer the trust solely in the interests of the beneficiaries." (19–1308.02(a)). "A trustee shall take reasonable steps to ... protect the trust property." (DC Code 19–1308.09).

It follows then that if JKHC wishes to transfer the one piece of affordable residential property it possesses to a different owner, it must do so in the interests of its current and future beneficiaries and not in a way that satisfies any personal interests of the trustees that are inconsistent with those of the beneficiaries. That

means the Property must go to an entity that is committed to preserving it as affordable housing *and* that the transfer be for the least amount of money.

That is exactly the opposite of what the board of JKHC decided, planned, and contracted to do. This Court has not looked approvingly at such corporate actions so obviously contrary to a corporation's purpose(s) (*Moon v. FAMILY FEDERATION FOR WORLD PEACE*, 281 A. 3d 46, 63-64 (D. C. 2022)).

JKHC asserts in its filings various reasons for wanting to transfer the Property to another owner. However, they all seek to deflect the Court's attention away from JKHC's actions, not just to transfer to a non-501c3 entity the principal charitable asset entrusted to it to preserve as such, but to do so for an amount of money that is far in excess, possibly by more than \$500,000, of the amount necessary to extinguish its lawful financial obligations (that is, those obligations occurred in furtherance of its purposes and not against them).

JKHC decided to rush the Property to sale in the apparent belief that, so long as money left over after it has paid its bills went to another 501c3 entity, there would be no problem. However, this glosses over the fact that JKHC had to *first* violate the purposes for which it was founded, especially its duty to serve the interests of the current and future resident beneficiaries, as well as the public interest or policy, *before* it can get the money from the Property's sale.

In fact, JKHC has contracted, at the expense of its low-income beneficiary residents, to enrich a private investor with a property that will immediately have potential resale value far beyond the contract price thereby exacerbating the rising cost of housing and living in the District. Additionally, even if the proceeds in excess of liabilities are donated to another nonprofit housing provider, those funds will nonetheless be paid to the staff and vendors of that nonprofit. In other words, sale of the Property benefits everyone involved at the expense of the persons for whom JKHC was created to protect.

"A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust." (19–1310.01(a)).

The sale of the Property has not been consummated and the contract for that sale should be voided by the Court as unlawful.

"A contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, or otherwise contrary to good morals." (118 Cal.Rptr.2d 494, 497 (97 Cal. App. 4th 470 (2002)). Acting in furtherance of good morals is in the public interest where, in the District, an "Issue of public interest" is defined as "an issue related to health or safety; environmental, economic, or community well-being; the District government; ..." D.C. Code § 16-5501(3).

"'Public policy' is that principle of law which holds that no one can lawfully do that which tends to be injurious to the public or against the public good." (*CARL v. CHILDREN'S HOSPITAL*, 657 A.2d 286, 298 (D. C. 1995) citing *Boyle v. Vista Eyewear, Inc.*, 700 S.W.2d 859, 871 (Mo.Ct. App.1985)).

It is not in the public interest or good public policy to allow a District chartered charitable trust to enrich a private investor against its purposes, at the financial and physiological expense of its current and future beneficiaries, and against the laws and relevant policies of the District.

"To remedy a breach of trust that has occurred or may occur, the court may: ... void an act of the trustee, impose a ... a constructive trust on trust property, or ... [o]rder any other appropriate relief." (DC Code 19–1310.01(b)(9-10)).

Additionally, under DC Code 19-1307.06(b), "The court may remove a trustee if: (1) The trustee has committed a serious breach of trust; (3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or (4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available." Or, "Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 19-1310.01(b) as may be necessary to protect the trust property or the interests of the beneficiaries." (DC Code 19–1307.06(c)).

Relieving JKHC of its duties will not harm its volunteer trustees or anyone else associated with this action. Indeed, it will make their lives less burdened.

Whereas to prolong its involvement with the Property and the lives of its residents will harm both.

As noted above, the District's counsel (the AG), is in settlement talks with JKHC's counsel aimed at recommending approval of the current sales contract if certain conditions, unknown to the Petitioner, are met. Besides the authority given the AG to enforce the Nonprofit Corporations Act ("NCA") as cited in its complaint (p. 4), the AG "has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the District of Columbia" (19–1301.10(c)) as well as "be[ing] responsible for upholding the public interest." (D. C. Code 1–301.81(a)(1)). Given its statutory authorities and mandate, it is not clear why the AG has chosen to pursue a settlement that would ratify what appears to be an unlawful sales contract. It is hoped that the AG will support this motion if only to get the clarity of the Court's view of that contract.

Conclusion: After a long history of waste and neglect of trust assets and hostility toward its beneficiaries, JKHC decided to separate itself from both as quickly as possible without the required Court approval. For the reasons set forth above the Court should immediately void the contract for sale of the Property and put the Property and money from it into receivership or a Court-supervised trust for the health and well-being of its low-income resident beneficiaries and the public interest in safeguarding their lives.

PRAYER FOR RELIEF

Petitioner adopts as written all requests listed in the District's Prayer for Relief of its complaint and adds to or restates those requests consistent with this motion:

- 1.) That the Court grant this motion to intervene; and,
- 2.) Declare as soon as possible that the current Property sales contract between JKHC and the non-501c3 buyer is void for being unlawful as against JKHC's corporate purposes and beneficiaries' interest, as well as against the public interests and policy of the District;
- 3.) Suspend settlement talks or any settlement agreement pending the Court's findings and declaration of the lawfulness of the Property sales contract;
- 4.) As per DC Code 19–1307.06(c) cited above, appoint a receiver to take over JKHC or possession of the Property in order to collect and use the money being

paid by the VHH Household to make immediate needed repairs starting with the roof of the house;

- 5.) If the Property sales contract is found unlawful and voided then order the trustees of JKHC to reimburse to JKHC all money spent to procure and defend it and / or remove the current board of JKHC for its long-standing neglect of its duties, its wasteful handling of trust assets, and hostility toward resident trust beneficiaries;
- 6.) Appoint competent counsel to represent the resident beneficiaries of the Property as prescribed by DC Code 19–1303.05(a);
- 7.) Issue such orders as the Court considers equitable and necessary to sustain the low-cost housing at the Property in the most affordable way possible;
- 8.) In the event the Courts upholds the current Property sales contract, Petitioner gives Notice of Intent to Appeal that decision and requests the Court stay the sale of the Property pending the Appeals Court's decision.

Respectfully submitted via Odyssey July 30, 2023,

/s/ Peter Farina

Peter Farina
Petitioner, pro se
1304 Euclid St NW
Washington DC 20009
202-351-8299

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2023, Petitioner's Motion to Intervene was served on counsel of record via Odyssey.

<u>/s/ Peter Farina</u>

Peter Farina
Petitioner, pro se
1304 Euclid St NW
Washington DC 20009
202-351-8299

Exhibit B

(Appellant's Motion for Reconsideration)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

DISTRICT OF COLUMBIA,

Civil Action No.: 2022 CA 004492 B

Plaintiff,

The Honorable Judge Juliet J. McKenna

VS.

Next Event:

Remote Mediation 10/11/2023

JANET KEENAN HOUSING CORPORATION,

Defendant,

PETITIONER'S (UNOPPOSED) MOTION FOR RECONSIDERATION OF THE COURT'S DENIAL OF HIS MOTION TO INTERVENE.

Petitioner, *pro se*, Peter Farina (Petitioner), pursuant to this Court's Rule of Civil Procedure #60 "Relief from a Judgment or Order" (Rule 60), respectfully requests the Court reconsider its August 24, 2023 Order (Order) dismissing his Motion to Intervene (Motion).

Petitioner, by and through his Motion to Intervene filed and served on the Parties July 30th, 2023, put the Court and Parties on Notice that his (and others similarly situated) right to reside affordably at the subject property, 1304 Euclid Street NW, Washington DC (Property) was being threatened by the Parties' apparent settlement in principle (SIP) that would require the Court to approve the pending market-rate sale of the property to someone who, according to the District's Opposition to his Motion, has no intention to preserve its affordability for him (them).

Now the Court, having denied his Motion, appears willing to let that happen without argument from the Petitioner.

Rule 60 states in relevant parts:

- (b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDING. On motion and just terms, the court may relieve a party ... from a[n]...order, ... for the following reasons:
- (1) mistake, inadvertence, surprise, or excusable neglect; ...
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; ...
- (5) ... or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief. ...
- (d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:
- (1) entertain an independent action to relieve a party from a[n] ...order;

Undisputed Facts and Law

The following facts and law indicated in Petitioner's Motion or found elsewhere in the Court record are undisputed:

- 1.) Petitioner is and has been for over 33 years a resident of the Property;
- 2.) Petitioner was a creator of Defendant (JKHC), a 501(c)(3) nonprofit charitable corporation based in the District whose corporate purpose is to "preserve and promote affordable housing in the District";
- 3.) JKHC was founded for the express purpose of preserving the affordable housing in existence at the Property;
- 4.) JKHC's Article of Incorporation and Bylaws require that upon dissolution it "shall, after paying or making adequate provision for the payment of all liabilities and obligations of the Corporation, distribute such assets to an organization exempt from taxation under Sections 501(c)(3) of the [IRS] Code." (Article "SEVENTH" and "ARTICLE VIII" Section 8.2, respectively)
- 5.) Petitioner has been JKHC's overwhelming funder throughout its existence;
- 6.) This Court has "recognized the applicability of the rules relating to charitable trusts to such corporations" (*Family Federation v. Hyun Jin Moon*, 129 A. 3d 234, (D. C. 2015) at footnote 15)" (Motion p. 7, para. 2);
- 7.) The rules applicable to charitable trusts are found in the District's Uniform Trust Code (UTC) at DC Code Title 19, Chapter 13;

- 8.) The UTC provides that a (""settlor" means a person...who <u>creates</u>, or contributes property to, a trust." (DC Code 19–1301.03(16) and, "The settlor of a charitable trust, <u>among others</u>, may maintain a proceeding to enforce the trust." (DC Code 19–1304.05(c) underscores added);
- 9.) This Court's criteria in *Hooker v. Edes Home* provides the basis for finding Petitioner is one <u>among others</u> with "special interest" standing to enforce the purpose and duties of JKHC;
- 10.) The settlement in principle (SIP) between JKHC and Plaintiff (District) is based on the approval of the pending sales contract on the Property to a private non-501(c)(3) market-rate buyer with no intention of preserving its affordable housing;
- 11.) The market rate price of the sales contract far exceeds the outstanding liabilities of JKHC, possibly by more than \$500,000;
- 12.) No compelling reason has been stated in Court documents thus far for requiring or allowing JKHC to dispose of it Property for a cost far in excess of its liabilities;
- 13.) Selling the Property in the manner intended by the Parties SIP would fail to preserve affordable housing on site;
- 14.) Petitioner's (and others similarly situated) ability to reside affordably at the Property would be lost if the sales contract is approved;

15.) NEITHER PARTY DENIES DIRECTLY PETITIONER'S ALLEGATION
THAT THE PROPERTY SALES CONTRACT THAT IS THE BASIS OF THE
PARTIES SIP IS UNLAWFUL.

JKHC, given the opportunity, did not dispute any of the statements made in Petitioner's Motion including especially that, on the basis of those statements, its

Discussion of Errors

Petitioner asserted in the first paragraph of is Motion that the Property sales contract "is void, ab initio, for being unlawfully against JKHC purposes, its beneficiaries' interests as well as public interest and policy." (Motion p. 1, para. 1). JKHC chose to remain silent the contents of the Motion claiming it could not evaluate them because of procedural defects with the filing (Defendant's Opposition to Motion to Intervene, p. 2).

The Plaintiff (District), noting similar procedural issues, went further by making numerous and misleading arguments for why Petitioner should not be allowed into Court. It significantly did not directly deny his allegation that the Property sales contract us unlawful. Rather, it asserted, erroneously, that because JKHC has shown that it cannot financially maintain the Property and that it was dissolving, the SIP "[satisfys] both JKHC's purpose and the cy pres doctrine" (District's Opposition p. 13, para. 1). In both respects, it does not!

As to whether Petitioner can bring his allegation into Court, the District *does not deny* that JKHC is an IRS 501(c)(3) charitable corporation or that the "rules of charitable trusts" apply to it as stated by this Court in *Family Federation*. Instead, the District argues misleadingly that JKHC is not a trust in direct contradiction to its assertion in its Complaint that "[its] assets are a form of public trust." (District's Complaint p. 4, para. 17, technically, assets are the *res* of a trust, not the trust itself).

Petitioner believes these and other misrepresentations (discussed further below) coming from the District's Attorney General (AG) contributed to Court errs in its initial denial of his Motion.

From Petitioner's reading of the Court's Order, there appear to be three primary reasons for the Court's denial of his Motion: 1.) Petitioner lacked standing; 2.) His Motion is untimely (which assumes he would have standing); and, 3.) His filing was procedurally defective. Petitioner will address these concerns in that order showing how they are in error and/or the result of misrepresentation, or otherwise excusable neglect. In doing so, he asks the Court to keep in mind that he has no formal legal training, let alone the extensive legal practice experience, nor the legal staff, time, or money that the Parties have.

Petitioner sought intervention under this Court's Rule 24 which provides in relevant parts,

- (a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:
- (1) is given an unconditional right to intervene by an applicable law; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
- (b) PERMISSIVE INTERVENTION.
- (1) In General. On timely motion, the court may permit anyone to intervene who:
- (A) is given a conditional right to intervene by an applicable law; or
- (B) has a claim or defense that shares with the main action a common question of law or fact.
- [...]
- (3) *Delay or Prejudice*. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.
- (c) NOTICE AND PLEADING REQUIRED. ...

The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Err in Failing to Find Petitioner Met the Requirements of Rule 24(a) or (b) and Therefore has Standing

It is notable to the Petitioner that neither the Court's Order, nor the Parties'

Oppositions that it appears to rely on, expressly denies that he met the requirements of Rule 24 (a) and/or (b) given what he has presented in his Motion Rather, the Court, like the Parties, believes that since his Motion did not conform to the letter of Rule 24(c), it could not find "substantive legal grounds" to support intervention.

Petitioner responses by noting the Court's citation of *Jones v. Fondufe*, 908 A.2d 1161, 1163 (D.C. 2006) in regard only to "timeliness" (Order p. 2, para. 3) However, that ruling by this Court goes on to state,

the "four "factors that a trial court must consider in determining whether to grant or deny a motion to intervene," <u>McPherson v. Dist. of Columbia Hous. Auth.</u>, 833

A.2d 991, 994 (D.C.2003), [cited by the Petitioner in his Motion, p. 1] "timeliness, interest, impairment of interest, and adequacy of representation. The language of the rule is mandatory: a motion to intervene that meets these four criteria "shall be permitted," "unless the applicant's interest is adequately represented by existing parties." Super. Ct. Civ. R. 24(a), (a)(2) (emphasis added). Thus, we have adopted a "broad reading" of the word "interest" because it is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." (Jones v. Fondufe, 908 A.2d 1161, 1163 (D.C. 2006), citation and footnote omitted).

Addressing timeliness last, the language of Petitioner's Motion clearly meets the other requirements of Rule 24(a)(2) in that he "claims an interest ["beneficial" and possessory as a "tenant"] relating to the property or transaction that is the subject of the action [1304 Euclid Street NW, DC, (the "Property")], and is so situated that disposing of the action [by approval of the "settlement in principle" (SIP) based on an "unlawful" Property sales contract"] may as a practical matter impair or impede the movant's ability to protect its interest ["in residing affordably at the Property"], unless existing parties adequately represent that interest [which clearly they do not in seeking the Court's approval of a SIP based on a sales contract that he alleges is unlawfully against his and others interests]".

While Petitioner believes he has easily met the elemental requirements for intervention of Rule 24(a)(2), he also argues that he has "an unconditional right to intervene by an applicable law" under Rule 24(a)(1), specifically, the District's Uniform Trust Code ("UTC"), DC Code §§19-1301.01–1311.03 (Motion p.7, para. 2). As Petitioner clearly states in his Motion, "JKHC being a 501c3 charitable corporation, this Court has "recognized the applicability of the rules relating to charitable trusts to such corporations" (Family Federation v. Hyun Jin Moon, 129 A. 3d 234, (D. C. 2015) at footnote 15)." (Motion p. 7, para. 2). NEITHER PARTY DISPUTED THIS. Petitioner believes it was a mistake or inadvertence by the Court for not addressing this because it goes to the Court's failing to recognize Petitioner's standing and thereby prevent its hearing his argument of an unlawful contract at the heart of the proposed settlement (the District also misrepresents to the Court that he has no standing, more on this below).

Err in Failing to Find Standing

Nowhere in Rule 24 does the word "standing" appear. Indeed, the Court mentions "standing" only two times in its order, both times asserting, without explanation, that Petitioner lacks standing. One place where the word does appear is in the Court's "Legal Glossary" of its website. There the word "standing" is defined simply as, "The legal right to bring a lawsuit. Only a person with something at

stake has standing to bring a lawsuit." (https://www.dccourts.gov/services/legal-glossary/s).

The District misleadingly argues that Petitioner must have suffered some "injuryin-fact" to have (District's Opposition, p. 3-4). However, the full test described by this Court is, "Standing requires "an actual or *imminently* threatened injury that is attributable to the defendant and capable of redress by the court." Friends of Tilden Park, Inc. v. District of Columbia, 806 A.2d 1201, 1206-07 (D.C. 2002)." (Nicdao v. Two Rivers Public Charter School, Inc. (DCCA 2022), emphasis added). As Petitioner describes in his Motion is several places starting with the first paragraph, he "is being harmed by the on-going actions of the Defendant, Janet Keenan Housing Corporation ("JKHC" or "Defendant") [wasting trust money on litigation instead of repairing a leaky roof], and threatened by the pending action of the Plaintiff, District of Columbia (the "District" or "Plaintiff"), by and through its Attorney General ("AG")" (who we now know intends to settle its case based on an unlawful contract). He further stated in the first paragraph his belief that the sales contract for the Property was "unlawfully against JKHC purposes, its beneficiaries' interests as well as public interest and policy" (Motion, p. 1). He later clearly states that, "If the transfer of the Property as JKHC intends is approved, the charitable purpose and affordable housing at the Property will be eliminated for the Petitioner, his low-income housemates, and potentially scores of future low-income people of the District who could live there" and that the Attorney General (AG) representing the District appeared willing then, and confirmed now, to support JKHC's intention (Motion, p. 6, para. 1, emphasis added).

Petition's right to seek redress and the Court's capability of providing it for him is found not in the Nonprofit Corporations Act (NCA), where, as the District noted in its Opposition he has no standing (District's Opposition, pgs. 2 and 4), but in the UTC. As he describes in his Motion, not only was Petitioner a creator or "settlor" of the JKHC trust into which he has contributed, directly and indirectly, almost all of its funding, he argues he is also a beneficiary of it. In either or both respects he has standing to enforce the trust (""settlor" means a person...who creates, or contributes property to, a trust." (DC Code 19–1301.03(16) and, "The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust." (DC Code 19–1304.05(c) emphasis added). Petitioner cited in the first paragraph of his Motion the relevant section in this Court's decision in *Hooker v. Edes* ("579 A. 2d 608,613-616 (D. C. 1990)", Motion p. 1, para. 1, emphasis added) supporting his "special interest" standing as one "among others" to enforce the JKHC trust. As this Court has stated,

Our principles of justiciability recognize that the injury-in-fact requirement can be satisfied "solely by virtue of `statutes creating legal rights, the invasion of which creates standing."" (citing, *Warth, supra,* 422 U.S. at 500, 95 S.Ct. 2197; accord

Lujan, supra, 504 U.S. at 578, 112 S.Ct. 2130) (*Grayson v. AT & T CORP.*, 15 A. 3d 219,248 (DCCA 2011).

The Court Erred in Failing to Find Petitioner's Motion was Timely

Rule 24 requires that a motion be "timely". The Court ruled that Petitioner's

Motion was "untimely" because it (paraphrasing),

- a.) Comes almost one year after he knew the original Complaint was filed;
- b.) Is on the eve of the parties reaching a "settlement in principle"; and,
- c.) Petitioner's intervention now would "unnecessarily delay the parties' ability to timely resolve this legal action." (Order p. 3, emphasis added).

Petitioner responds noting this language in the U. S. Court of Appeals for the D. C.

Circuit's Natural Res. Def. Council v. Costle decision:

"Whether a motion to intervene is timely "is to be determined from all the circumstances." (citing *NAACP v. New York*, 413 US 345,365 US Supreme Court 1973). More particularly, this court has noted:

[T]he amount of time which has elapsed since the litigation began is not in itself the determinative test of timeliness. Rather, the court should also look to the related circumstances, including the purpose for which intervention is sought . . . and the improbability of prejudice to those already in the case. (citing *Hodgson v. United Mine Workers of America*, 153 U.S.App.D.C. 407, 418, 473 F.2d 118, 129 (1972))

[...] In relying upon the age of the case and its closeness to settlement, the Court failed to take into account "the purpose for which intervention [was] sought," (*Natural Res. Def. Council v. Costle*, 183 U.S.App. D.C. 11, 17, 561 F.2d 904, 910 (1977)).

Hodgson further states,

While timeliness is a prerequisite to any claim for intervention under Rule 24, it is settled — particularly where intervention is sought as of right — that the amount of time which has elapsed since the litigation began is not in itself the

determinative test of timeliness. Rather, the court should also look to the related circumstances, including the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant's rights, and the improbability of prejudice to those already parties in the case. (*Hodgson*, 473 F.2d 118, 130 (1972), internal citations omitted).

Given the three criteria for timeliness laid out by those Courts, Petitioner believes this Court erred in failing to find his Motion timely. Petitioner stated his purpose for intervening in the opening paragraph of his Motion, that the Court declare the sales contract on the Property that is at the heart of the proposed settlement "is void, *ab initio*, for being unlawfully against JKHC purposes, its beneficiaries' interests as well as public interest and policy" AND NEITHER PARTY DISPUTED IT (JKHC chose to remain silent on that statement while the District argued in various and misleading ways for the Court to ignore the contract's unlawfulness and focus on where the money would go). He has further described in detail the facts, code, and caselaw in support of his standing to bring that request before the Court and that the Parties are not acting lawfully to preserve his right to protect his interest in the Property.

The question remaining is, would the Parties be prejudiced by the Petitioner being allowed to intervene on that basis for that purpose? From Petition's perspective, this is akin to asking, would a bank robber be prejudiced if Petitioner acted to thwart the robbery? If the Court finds that Petitioner has met the first two criteria above, by implication it must find that both Parties have a legal duty to protect his

interests to the fullest extent of the law, something Petitioner imagines the Court would want to make clear. Vacating the Court's Order and granting Petitioner's Motion to Intervene would *necessarily* cause a delay in the Parties apparent rush to judgement. But so what? The Parties knew, or should have known because it was their duty to know, the facts and applicable law of trusts when this action was started. And, given the number of attorneys on both sides, they have only themselves to blame for any delay caused by their failure to act *all* the legal interests, beneficial and possessory, of those residing at the Property, including the Petitioner.

Next Pleadings.....

Possibly the Court was distracted by the District's extensively detailed misrepresentation of JKHC not being a trust despite the fact its own complaint recognizes JKHC is "set up to benefit the public [with its] assets [being] a form of public trust" (District Complaint p. 4, para. 17).

The Court Erred in Failing to Find that Petitioner's Motion Contained Within It the Requisite Elements of a Pleading

The Court states, "Mr. Farina's Motion *fails to include* a pleading with his Motion to Intervene that expressly sets out the claim for which intervention is sought, in violation of Rule 24(c)" (Order, p. 2, para. 2, emphasis added).

Petitioner responds that, given the what he has presented above in support of his standing and timeliness, his Motion *did include* the necessary elements of a pleading to meet Rule 24(c). He notes the definition of a pleading in the Court's "Legal Glossary" posted on its website which reads, "Pleadings The written statements of fact and law filed by the parties to a lawsuit."

(https://www.dccourts.gov/services/legal-glossary/p).

This Court's Rules of Civil Procedure states at,

Rule 8. General Rules of Pleading

- (a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:
- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief;
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief; [...]
- (e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice. COMMENT

Identical to Federal Rule of Civil Procedure 8.

Petitioner's Motion met all these requirements and prays the Court agrees so as to "do justice" with respect to hearing his claim(s).

The U. S. District Court for the Eastern District of Michigan has stated that,

Although Plaintiffs' original filing was entitled as a "motion," it contained the essential elements of a pleading as set forth in Federal Rule of Civil Procedure 8(a). Thus, the Court finds Plaintiffs' argument that their motion was the "functional equivalent" of a complaint persuasive. *See* Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice."); *cf. Beem v. Ferguson*, 713 F. App'x 974, 980 (11th Cir. 2018) (treating motion as "functional equivalent" of complaint because it satisfied Rule 8 pleading requirements). Moreover, the Court may "excuse technical pleading irregularities as long as they neither undermine the

purpose of notice pleading nor prejudice the adverse party." *See Phillips v. Girdich*, 408 F.3d 124, 128 (2d Cir. 2005). (*GD v. UTICA COMMUNITY SCHOOLS*, Dist. Court, ED Michigan 2021, <u>Case No. 20-12864.</u>)

Petitioner also notes this Court's language in *Carter-Obayuwana v. Howard University*,

We begin with the principle that "liberal rules of pleading normally protect a plaintiff against dismissal of an ambiguous complaint when it can be said to state a claim if all reasonable inferences are drawn in the plaintiff's favor." Bible Way Church of Our Lord Jesus Christ v. Beards, 680 A.2d 419, 430 (D.C.1996). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Our rules "reject the approach that pleading is a game of skill in which one misstep... may be decisive to the outcome." *Id.* at 48, 78 S.Ct. 99; see also, e.g., Francis v. Recycling Solutions, Inc., 695 A.2d 63, 78 (D.C.1997). Rather, the rules "manifest a preference for resolution of disputes on the merits, not on technicalities of pleading." Keith v. Washington, 401 A.2d 468, 470 (D.C.1979). "[P]leadings shall be so construed as to do substantial justice." Super. Ct. Civ. R. 8(f)[sic]. "[T]he purpose of pleading is to facilitate a proper decision on the merits." Foman v. Davis, 371 U.S. 178, 181, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) (citation omitted)"

...

The purpose of a pleading is to put the opposing party on notice of the nature of the pleader's claims. *See, e.g., Scott v. District of Columbia,* 493 A.2d 319, 323 (D.C.1985); *Lee v. Foote,* 481 A.2d 484, 487 n. 8 (D.C.1984) (per curiam). (*Carter-Obayuwana v. Howard University,* 764 A. 2d 779, 788-9 (DCCA 2001).

And, this in Williamson v. St. Martin's Apartments,

"There is a need to be flexible in addressing the continuing problem of indigent civil litigants' inadequate access to legal representation. We have joined other courts in emphasizing the importance of having someone (whether the court, lawyers staffing the court resource centers, or others) "provid[e] pro se litigants with the necessary knowledge to participate effectively in the trial process." *Reade v. Saradji*, 994 A.2d 368, 373 (D.C. 2010) (internal quotation marks omitted). And we require trial judges to "exercise special care with a *pro se* litigant in special

circumstances[,]" *id.*, which, we have said, "will sometimes require the judge to inform a party of the consequences of her procedural acts or omissions." *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 756-57 n.12 (D.C. 2008). Recognizing the critical role judges play in ensuring that rights are not inadvertently lost by unrepresented litigants, the Code of Judicial Conduct similarly advises that judges have an "affirmative role" in making "reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and procedural requirements." Rule 2.6 (Ensuring the Right to be Heard), Cmt. 1A." (*Williamson v. Williamson v. St. Martin's Apartments*, 234 A. 3d 187, 194 (DCCA 2020).

Finally, there is this in *In re Harrington* citing,

<u>Smith v. United States</u>, 454 A.2d 822, 824 n.4 (D.C. 1983) ("Our duty to be indulgent of pro se pleadings is firmly established."). (*In re Harrington*, 283 A. 3d 714, 719 (DCCA 2022).

Petitioner deeply wishes that he was as capable as all the legal experts he finds arrayed against him. Given that the best he can do is all he can do, and in the light of the forgoing, he asks the Court to find excusable neglect in the less than professional style of his pleading with the promise that he will try to do better in the future (if the Court will give him one).

Misrepresentations by the District

The District in its Opposition made procedural arguments against his Motion (addressed above) and then spent some effort arguing, misleadingly, that JKHC is not a trust that Petitioner had any right to enforce (substantively disputed above). It then argues in the alternative that,

"even if a charitable trust existed here..., the breach of trust would be redressed exactly as the settlement in principle provides, rendering the potential claim [of the Petitioner] futile."...

"Assuming that the alleged charitable purpose of a trust was for the Property to continue as affordable housing for the Household, the impossibility of that purpose would, based on cy pres, lead to the next-best option, which is exactly what the settlement in principle provides. The Property would still be sold and the proceeds distributed in the manner proposed; that is, the net proceeds would be transferred to another nonprofit for use towards affordable housing programming in the District."...

"The existence of a trust therefore would not disturb or otherwise conflict with the Parties' settlement in principle, and the injury-in-fact Farina alleges could not be redressed any differently than how the settlement provides."...

"Thus, even if the various forms of requested relief (voiding of the sales contract, removal of the JKHC board, etc.) were ultimately awarded, the end result would be the same: JKHC could sell the Property, transfer the net proceeds to another nonprofit to have them put towards District affordable housing, and dissolve. [footnote]7."

"[Footnote]7 ... The settlement agreement merely provides an avenue for JKHC to sell the Property in adherence with cy pres doctrine..." (District's Opposition, pgs. 11-13)

Petitioner asks the Court to find, first, that if JKHC is to be viewed as a charitable trust and thereby subject to the laws of trusts, then the District is conceding Petitioner has standing to enforce the trust under the UTC given his involvement with the Property and the formation of JKHC to hold the Property in trust. Further, as Petitioner describes in his Motion, the UTC, if not the NCA, compels and fully empowers the Court to protect Petitioner's interest in preserving the affordability of the Property.

Second, and most significantly, is the District's disturbing assertion that allowing the Property to go to a for-profit buyer with no intention of using it for affordable housing "[satisfys] both JKHC's purpose and the cy pres doctrine" (District's Opposition p. 13, para. 1). This could not be further from the truth in both respects. It also it contradicts the District's representations made in its complaint (District's Complaint, pgs 11-12) and specifically in its Oct. 25, 2022 "Opposition to Defendant's Motion to Approve Sale of Property" (copy attached to this filing) where it discusses extensively the meaning and application of cy pres in the District and to the Property.

As the District has documented and cited numerous times, JKHC's purpose / "mission" is to "preserve and promoted affordable housing in the District". The United States District Court for the District of Delaware. like a number of other courts has noted,

"the word "preserve" is defined as "to keep safe from injury, harm or destruction; to keep alive, intact, in existence or from decay; to keep or save from decomposition." *Webster's Third New International Dictionary* 1794 (1961). Citation is also made to two cases in which similar language is construed. *See Reed v. Central National Bank of Alva*, 421 F.2d 113 (10th Cir. 1970); *Bookout v. Atlas Financial Corp.*, 395 F.Supp. 1338 (N.D.Ga.1974). (*United States v. Stone*, 530 F. Supp. 1373 - Dist. Court, D. Delaware 1982).

JKHC was founded to specifically "preserve affordable housing" *at the*Property. It's assertion that it can't maintain the affordability of the Property

doesn't mean that no can. And, there is no evidence in the record that no one in

the District is willing to take on the Property for the cost of covering JKHC's liabilities and use it for affordable housing.

JKHC obligation to its purpose, and the beneficial interests of the Property residents, does not end simply because it no longer wishes to own the property or that it is dissolving. It is still obligated to dispose of the Property in a manner consistent with its purpose, its bylaws, and its beneficiaries' interests which means in the most affordable way possible. JKHC's bylaw require that it "distribute [its] assets to an organization exempt from taxation under Sections 501(c)(3) of the [IRS] Code." (Bylaws, Art. VIII, Sec. 8.2).

Separate and apart from these obligations is the statutory obligation of *cy pres* found in the NCA (D.C. Code 29-410.03(a) and 29-412.05(c)) and the UTC (DC Code 19–1304.13) "The term "cy pres" is derived from the Norman French expression *cy pres comme possible*, which means "as near as possible." (*Democratic Cent. Committee v. Washington Metro Area Transit Commission*, 84 F. 3d 451, 455 fn. 1 (D.C. Cir. 1996)). Under the NCA the Court must approve the disposition of a dissolving nonprofits assets "pursuant to the law of the District on cy pres" (DC Code 29-412.05(c)). Under the UTC the Court has broad authority to "apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner *consistent with the settlor's charitable purposes*." (DC Code 19-1304.13, emphasis added).

The District in its Oct. 25, 2022 motion opposing JKHC's motion to approve the Property's sale indicated its view that cy pres was a form of "relief" that JKHC would be entitled to upon an adequate showing that it could no longer operate the housing at the Property. Cy pres is not a form of relief. It is a condition imposed on the transfer of a nonprofit's property to ensure the property continues to serve the its intended purpose. That JKHC can show it cannot financially sustain the Property does not give the District authority to give JKHC a pass to violate its purpose or the cy pres condition it must meet in disposing of the Property.

As Petitioner describes in the Motion, selling the Property as the Parties currently envision would be <u>as far as possible</u> from Petitioner's intention in forming JKHC as well as utterly against its corporate purposes and trust duties. JKHC's liabilities are approximately \$500,000 less than the Property's believed contract price. It simply doesn't need that much money to close its doors and is totally unnecessary. Furthermore, the District provides no reason, and cites no authority, for allowing JKHC to dispose of its Property in a manner that is "contrary to its nonprofit purposes" and the doctrine of cy pres. The District's representative, the AG, is legally obligated by the NCA to enforce JKHC's purpose to "preserve affordable housing" at the Property and "any diversion of [the Property] from its existing charitable purpose *must hew as closely as possible* to the [Property's] original purpose" (Districts Opposition to Defendant's Motion to

Approve Sale of Property, 10/25/22, p. 1, emphasis added). The excuse that JKHC can no longer financially maintain the Property under present conditions does mean no else can especially if those conditions are modified under Court supervision.

As the District has noted in its Complaint and filings the AG's role is hold JKHC accountable to its purposes and obligations under DC Code "and common law" (District's Complaint para. 18, citing DC Code 29-412.20(a)(1)(B)-(C)). However, it must do so in a manner that upholds *all* the rights of the affected residents of the District, including the Petitioner's. The District, by its settlement actions and representations in it Opposition, not only misrepresents the facts and law applicable in this case, in doing so it is acting against its duty to uphold the Petitioner's beneficial interest in the Property and his right to be heard by the Court to protect that interest. That is a conflict of interest and the District's Opposition to Petitioner's Motion to Intervene should be viewed accordingly.

Petitioner's Rule 12-I Failure to Certify Consent

Petitioner acknowledges and apologizes for failing to include a Certification of Consent with his Motion as required by Rule 12-I. Petitioner states he did not know of this Rule and what it required. He asks the Court to find excusable neglect

for his omission. He promises to seek consent of the Parties in the future and certify it as required.

Pray for Relief

For the forgoing reasons or any other the Court deems appropriate, he respectfully requests,

- 1.) The Court's vacate its Order of August 24, 2023; and,
- 2.) Grant his Motion to Intervene; or in the alternative,
- 3.) Issue any such Order that would permit Petitioner's concerns to heard on the Record; or otherwise,
- 4.) Preserve affordable housing at the Property.

Respectfully submitted,

/s/ Peter Farina
Peter Farina
Petitioner, pro se
1304 Euclid St NW
Washington DC 20009
202-351-8299
petefarina@verizon.net

CERTIFICATE OF CONSENT

I hereby certify that on September 17, 2023 at 7:13pm EST, I sought by email the consent of the Parties' last attorneys of record, Samantha Hall samantha.hall@dc.gov for the Plaintiff and Ian Thomas ithomas@offitkurman.com for the Defendant, to file this *Petitioner's Motion for Reconsideration of the Court's Denial of His Motion to Intervene*. Ms. Hall responded with an out-of-office reply and Mr. Thomas did not respond at all by the time of this filing.

/s/ Peter Farina

Peter Farina
Petitioner, pro se
1304 Euclid St NW
Washington DC 20009
202-351-8299
petefarina@verizon.net

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2023, a copy of the forgoing <u>Petitioner's</u> <u>Motion for Reconsideration of the Court's Denial of His Motion to Intervene</u> was filed and served on counsel of record via Odyssey.

/s/ Peter Farina

Peter Farina
Petitioner, pro se
1304 Euclid St NW
Washington DC 20009
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Exhibit C

(Excerpt from Appellant's case, November 7, 2023, hearing transcript, p. 16-19)

THE COURT: [...] And again, having an opportunity to reflect on the evidence that has been introduced thus far, and again focusing on the cases that were the primary subject of Mr. Farina's motion and the subject of some discussion at our last hearing -- again, being primarily Hoker v. Eads, but also Family Federation -- I am prepared to find, at this time, as a matter of law, that to the extent that Mr. Farina has standing to enforce the terms of the trust, or in this case, to enforce the distribution of the proceeds from the sale of the charitable asset, and an opportunity to be heard concerning whether or not the use of the proceeds as provided for in the settlement agreement that was reached in the 2022 litigation meet the requirements of the cy pres doctrine, that to the extent that Mr. Farina has standing to do that -- which frankly, is still very much an open question based upon the state of the evidence thus far -- I am prepared to find as a matter of law that Mr. Farina does not have standing in the cy pres litigation to stop the sale of 1304 Euclid Street Northwest.

1304 Euclid Street Northwest is a charitable asset of the 501(c)(3) nonprofit corporation. The fact that it is the sole charitable asset of -- or the primary charitable asset of the nonprofit corporation, in my view, doesn't change the calculation. I think there is ample case law, including Hoker v. Eads, that discusses the fact that an individual, even while they may have a beneficial interest in the mission of the organization and the purpose for which the nonprofit corporation was formed, that that doesn't not necessarily translate into a finding that that same individual has standing to, in fact, stop the sale of the asset or to interfere with the nonprofit organization's disposition or distribution of its assets. Now, as we discussed at the last hearing, I think Hoker v. Eads presented a very unique situation. Because in that case, the mission of the nonprofit organization was inextricably intertwined with the property location itself.

Notwithstanding, the testimony that I received from Ms. Morton, I think -- even if, sort of, the propping up or the support of 1304 Euclid Street Northwest was the primary focus of the Janet Keating Housing Corporation -- that does not translate the property itself, in my view, as a fundamental or inextricably

intertwined aspect of the mission of the Janet Keenan Housing Corporation. As we've discussed at length and repeatedly, the articles of incorporation provide for a very broad mission of the nonprofit, that being to provide low income housing to residents of the District of Columbia, separate and apart from - wholly separate and apart from the particular property at issue.

[...]

But at this time, I have been unable to find any case law that would support a finding that, even if Mr. Farina has a beneficial interest in enforcing the mission of the nonprofit, that that somehow translates into a right to interfere with the fiduciary duty of the Janet Keenan Housing Corporation board members to manage the organization's financial affairs and to satisfy the outstanding financial obligations of the nonprofit 501(c)(3) corporation in a responsible and consistent manner.

Exhibit D

(Excerpt from Appellant's case, January 11, 2024, hearing transcript, p. 46-63)

THE COURT'S RULING

THE COURT: Okay. So, at this time, I am prepared to issue a ruling both on Mr. Farina's pending motion for a temporary restraining order and preliminary injunction in Case No. 2023 CAB 6168, as well as a ruling on the merits given my earlier order granting the Janet Keenan Housing Corporation's motion to consolidate the curing for injunctive relief with trial on the merits, pursuant to D.C. Civil Rule 65(a).

I also note that, really, for all intents and -- and purposes since the filing of 2023 CAB 6168, from a practical perspective, the Court has treated that as consolidated with the underlying litigation in Case No. 2022 CAB 4492 B, which parties have been referring to as the "cy pres litigation."

Earlier this week on motion from the District of Columbia, I formally consolidated the two matters together giving -- given the significant overlap both in factual and legal issues. So to the extent relevant, the Court's findings now are applicable in each of the -- the cases that I've just referenced.

So currently pending before the Court are Mr. Farina's claims that he has standing to challenge the sale of the property, that being the property located at 1304 Euclid Street, Northwest, in Washington, D.C., and distribution of assets from the sale of the property, either under the Uniform Trust Code or, alternatively, because he was deprived of his rights under the Tenant Opportunity to Purchase Act, commonly referred to as "TOPA."

And to the extent that Mr. Farina's original motion or original complaint in the 2023 litigation also included a request for the appointment of a receiver, I had previously dismissed that claim at the conclusion of our hearing on December 13th given that there was no evidence that was presented in support of that claim.

Parties have appeared before the Court on four dates over the course of the last several months, that being

October 20th, November 1st, November 7th, and December 13th. I had an opportunity to hear testimony from a number of witnesses, receive into evidence a number of exhibits, as well as to periodically entertain argument from parties as the issues unfolded.

So, first, with respect to Mr. Farina's argument for standing under the Uniform Trust Code, at this time, I find that Mr. Farina lacks standing either under the Uniform Trust Code or under the Nonprofit Corporations Act to challenge either the sale of the property or the distribution of assets pursuant to the terms of the court-approved settlement agreement that was reached between the District of Columbia and the Janet Keenan Housing Corporation in Case 2022 CAB 4492 B.

The evidence that was introduced over the course of the four-day evidentiary hearing establishes that while Mr. Farina advocated for the formation of the Janet Keenan Housing Corporation to purchase the property at 1304 Euclid Street, Northwest, and was a former board member of the nonprofit, he is not a creator. He is not a cocreator, incorporator, settlor, trustee, or current board member of the organization nor does he have a possessory interest in the property as those terms are understood under either the Uniform Trust Code or the Nonprofit Corporations Act.

Rather, Mr. Farina is a long-time occupant of the property and head of household subject to the terms of a memorandum of understanding between the Janet Keenan Housing Corporation and the Victor Howell House, which by its terms was subject to termination.

And I will just note as a side issue that to the extent that there was any discrepancy between the two MOUs, the Court is prepared to simply credit the version of the MOU that was introduced into evidence by the plaintiff, Mr. Farina, in this case. As I noted during the course of the evidentiary hearing to the extent there were discrepancies in the document, I did not find those discrepancies to be either relevant or dispositive.

The finding that the MOU was subject to termination is -- was not -- is not based in any -- to any extent on the fact that the defendant's version included a termination date but rather on the plain language of the memorandum of understanding itself, which was contained in both of the -- both versions of the document.

I further find that Mr. Farina is neither an intended or present beneficiary of the Janet Keenan Housing Corporation pursuant to the rationale articulated by the D.C. Court of Appeals holding in Hooker vs. Edes Home -- and Edes is spelled E-D-E-S -- reported at 579 A.2d 608, which was a 1999 decision from the Court of Appeals.

As I indicated during the course of the evidentiary hearing, I find that that case is readily distinguishable from the instant situation. In that case, the trust at issue was specifically created for the purpose of maintaining a free home for aged and indigent widows residing in Georgetown. And I quote from the case; that is not my language.

Based upon this narrow -- narrowly-tailored mission, the Court of Appeals found that at least one individual, Mary Hooker, an indigent widow residing in Georgetown, had standing to enforce the charitable trust as an eligible potential resident of the property.

Here, as we've discussed at length, nothing in the Janet Keenan Housing Corporation articles of incorporation tie the mission of the organization to 1304 Euclid Street, Northwest, or to the Victor Howell House. Instead, the nonprofit was incorporated with a broad mission to preserve and promote affordable housing in the District of Columbia according to paragraph three of its articles of incorporation.

I also find that the instant case is readily distinguishable from Family Federation vs. Moon, reported at 129 A.3d 234, a 2015 decision in which plaintiffs were either recently oustered -- ousted directors, alleged successor trustees, or a primary donor for several decades.

Moreover, even if I were to find that Mr. Farina had standing to challenge the sale and distribution of assets as a beneficiary of the Janet Keenan Housing Corporation, his objections fail as a matter of law.

First, this Court previously approved the sale of the property and distribution of assets pursuant to D.C. Code 19-1304.13 of the Uniform Trust Code, which explicitly incorporates the doctrine of cy pres, pursuant to the terms of the consent settlement agreement.

In doing so, I determined that it was impracticable for Janet Keenan Housing Corporation to

continue operations and to maintain the property at 1304 Euclid Street and approve the settlement agreement reached after prolonged litigation with the District of Columbia requiring the Janet Keenan Housing Corporation to sell the property, and after satisfying its outstanding financial obligations, distribute the remaining proceeds to another well-established nonprofit organization to continue to carry out the mission of JKHC, both in assisting in the relocation of the current residents of the Victor Howell House into comparably affordable housing and to support affordable housing opportunities in the District of Columbia consistent with the original mission of the organization.

I will say that there is nothing that emerged during the four days of evidence in the course of these proceedings that has caused the Court in any way to question my original finding as embodied in the September 29th, 2023, order, that the settlement agreement that was reached between the District of Columbia and Janet Keenan was consistent with and fully embodied the doctrine of cy pres. The evidence that has emerged during the course of this litigation has clearly established that Janet Keenan Housing Corporation had no reasonable or feasible alternative.

With less than \$11,000 in its bank account as of two months ago and multiple outstanding debts, including a property tax bill of approximately \$4,500 and an outstanding loan balance of \$94,000, which is due this coming May, Janet Keenan Housing Corporation is financially unable to continue operations or maintain the property and, in fact, is facing likely imminent foreclosure. Janet Keenan Housing Corporation is financially insolvent.

Additionally, while Mr. Farina has maintained that the property should be purchased by another nonprofit organization committed to maintaining the home as low-income housing with himself as a resident, the evidence that was received over the course of the four-day hearing established that, in fact, Janet Keenan Housing Corporation had diligently pursued and exhausted this possibility, including with All Souls Housing Corporation, in addition to other nonprofits, including Mi Casa and Volunteers of America, without success.

Second, again, even if I were to find that the plaintiff had standing to challenge the sale and distribution, the sale of the property and the distribution

of assets to another nonprofit organization dedicated to preserving and promoting affordable housing in D.C. is entirely consistent with and, in fact, explicitly provided for in the Janet Keenan Housing Corporation original articles of incorporation.

And I quote from paragraph seven of the articles of incorporation, which explicitly provided that, In the event that the corporation dissolves or forfeits its charter, the board of directors shall, after paying or making adequate provision for the payment of all liabilities and obligations of the corporation, distribute such assets to an organization exempt from taxation under Sections 501(c)(3) of the code.

In the event that, for any reason, upon dissolution of the corporation, the board of directors shall fail to act in the manner herein provided within a reasonable period of time, the Superior Court of the District of Columbia or the equivalent court of the jurisdiction in which the principal office of the corporation is then located shall make such distribution as that court shall determine.

That is exactly what has happened here, and so there is no basis to find that the Janet Keenan Housing Corporation is in any way in breach of its original articles of incorporation or its original mission or purpose.

For all those reasons, at this time, I enter judgment in favor of the Janet Keenan Housing Corporation on the plaintiff's claim for standing under the Uniform Trust Code.

Mr. Farina's second claim is that the sale of 1304 Euclid Street, Northwest, should be stayed because he was deprived the right under the Tenant Opportunity to Purchase Act to match the price of the sales contract on the property.

The evidence supports a finding that the plaintiff initially had a right to make an offer on the property as an elderly occupant, which is defined by statute, not by me, as an individual 62 years of age or older, of 1304 Euclid Street, Northwest, which I do find to be a single-family accommodation.

And the Janet Keenan Housing Corporation initially recognized that right by providing the plaintiff proper

notice of its intent to sell, which was introduced into evidence as Plaintiff Exhibit B, as received by the plaintiff on September 26th of 2022, and which was then executed by Mr. Farina and returned to Janet Keenan Housing Corporation indicating his intent to invoke his rights under TOPA.

However, four days later, on September 30th of 2022, the District filed suit against Janet Keenan Housing Corporation, in 2022 CA 4492 B, alleging violations of the Nonprofit Corporation Act and sought an immediate stay of the sale of the property.

Within 10 days of filing suit, another judge of this Court granted the District's request and stayed any further activity directed towards the sale of 1304 Euclid Street, Northwest.

That stay remained in place until September 29th of 2023, when I issued an order approving the consent settlement agreement requiring Janet Keenan to sell the property, with all proceeds from the sale remaining after Janet Keenan Housing Corporation settled its outstanding financial obligations to go to another nonprofit organization to support low-income housing opportunities in the District of Columbia.

There is no ambiguity that this was a court-approved settlement. First, because of Janet Keenan Housing Corporation's nonprofit status, this Court was required under the doctrine of cy pres to carefully review the settlement agreement in order to determine whether the provisions of the agreement were consistent with the original charitable purpose.

I took that obligation seriously and for that reason required parties to appear for a hearing at which time I posed several questions to both the District and to Janet Keenan Housing Corporation about the settlement terms prior to formally approving the agreement through the issuance of a court order.

It is worth noting that while not the focal point of my inquiry at the time, there is no indication that either the Janet Keenan Housing Corporation or the District entered into the settlement agreement for the purpose or with the intent of depriving Mr. Farina or any other occupant of the property of the rights under TOPA. And the District has confirmed as much on several occasions during

the subsequent litigation.

In fact, as was the subject of discussion at the time, the settlement agreement specifically provided for a smooth transition for the current occupants of the property.

D.C. Code 42-3404.02(c)(2)(M) explicitly exempts a transfer of property pursuant to court order or a court-approved settlement agreement from the definition of a sale under TOPA. If there is no sale as defined by statute, the owner of the property is not required to provide any tenants with an opportunity to purchase the property.

Thus, with the issuance of the September 29th, 2023 order approving the consent settlement agreement, the property was exempted from the requirements of TOPA.

To the extent that there was any question about the applicability of the statutory exemption to the current situation, the D.C. Court of Appeals ruling in Juul vs. Rawlings, at 153 A.3d 749, decided in 2017, in which the Appellate Court affirmed the lower court ruling that the subsequent approval and enforcement of a consent settlement agreement exempted the transfer of the property from TOPA clearly resolves this question.

The rationale for this, as stated in Juul at 756 and at 758, is clear. TOPA's exemption for court-approved settlements illustrates the equally important policy of not unreasonably interfering with an owner's property right when that right is the subject of a binding settlement agreement, which our judicial system encourages, entered into during the course of litigation.

As the Tenant Opportunity to Purchase Act makes clear, a tenant's potential right of first refusal is not so absolute that it may interfere with the judicial process and the Court's authority to enforce contracts, including settlement agreements. When the trial court acts to ensure that a party does not intentionally frustrate the purpose of a settlement agreement procured through litigation, such action is not erroneous under TOPA.

The fact that Mr. Farina originally possessed a right of first refusal recognized by Janet Keenan Housing Corporation does not change this determination. As the D.C. Court of Appeals noted at page 757, the TOPA statute does not specify when a trial court order must be rendered in connection with a transfer of property to be exempt from

the definition of a sale.

Thus, I find that any rights Mr. Farina may have had under TOPA were extinguished at the time this Court approved the consent settlement agreement in the 2022 litigation and incorporated that agreement into a written order enforceable by this Court.

For that reason, judgment is entered in favor of Janet Keenan Housing Corporation and against Mr. Farina on the TOPA claim as well. And having previously dismissed Mr. Farina's receivership claim, this disposes of all claims set forth in Mr. Farina's complaint and resolves that action.

Now, with respect to the other motions that are currently pending before the Court, in Case No. 2022 CA 4492 B, Mr. Farina had filed a motion for a stay of my order denying his motion to intervene and subsequent motion to reconsider.

At this time, I do deny the request for any further stay of the September 29th, 2023, order denying the motion to reconsider and approving the consent settlement agreement.

With respect to the factors that I have considered, for the reasons I've just articulated, at this time, I find that Mr. Farina has little, if any, likelihood of success on the merits.

I will note that a request for stay was previously denied by the D.C. Court of Appeals on November 21st of 2023 on this and other grounds.

With respect to the second factor, I find that there -- there is no irreparable harm to Mr. Farina as a result of a denial of the motion for a stay given that the settlement agreement itself provides that relocation from the 1304 Euclid Street, Northwest, property is optional and further guarantees that if Mr. Farina or any other occupant elects to relocate to a Volunteers of America property, the rent will be no greater than the current rent being paid for a period of at least one year.

In contrast, I find that there would be significant harm that would result to the Janet Keenan Housing Corporation if the order is further stayed beyond

the sort of de facto stay that has been in place as this litigation has been proceeding.

As I previously noted, the lack of financial resources currently -- the Janet Keenan Housing Corporation currently has access to to maintain the property imposes a significant financial burden and hardship that may, in fact, result in the property being foreclosed upon within a matter of months if Janet Keenan Housing Corporation is not permitted to proceed with the sale of the property.

Finally, I find that the public interest strongly disfavors granting the stay as represented by the District of Columbia's involvement and position during the course of this litigation and its vigorous opposition to any further stay.

As I previously found, enforcement of the settlement agreement is in the interest of the homeless and low-income population of the District of Columbia given that all remaining proceeds from the sale of the property will be dedicated to Volunteer of America's affordable housing program within the District of Columbia. To stay enforcement would inevitably result in any proceeds being severely diminished if not extinguished entirely as a result of foreclosure.

So, for those reasons, the motion for a stay in Case No. 2022 CAB 4492 B is denied.
[...]

THE COURT: [...]

Okay. I believe that resolves all of the outstanding motions.

Mr. Farina, was there anything further you wanted to place on the record?

MR. FARINA: Nothing that I think would disturb what you've explained other than to note that -- and this is, I guess, for out-of-court discussions -- the possibility that I could purchase the house myself fairly quickly. But I guess that's not a matter for the Court anymore. THE COURT: No.

[...]

THE COURT: Correct. So the -- as I indicated, I do not anticipate issuing a detailed written ruling. I do anticipate before the close of business today issuing a very short order just incorporating [...] my oral findings into the written

order, and the -- that short order will enter judgment in

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favor of Janet Keenan Housing Corporation and against Mr. Farina in [...]2023 matter.
[...]
THE COURT: Okay. Thank you.
THE COURTROOM CLERK: Court is adjourned.
(Whereupon, the proceedings concluded at 12:48 p.m.)
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Exhibit E



December 10, 2023

Peter Farina 1305 Euclid Street, N.W. Washington, D.C. 20009

RE: 1304 EUCLID STREET, NW

Dear Mr. Farina:

I am a licensed District of Columbia independent real estate broker. I have been a full-time active licensee in both the commercial and residential real estate industry in the District of Columbia for over 38 years.

With regard to the above referenced property, I am pleased to confirm that I have a long-time client who has reviewed your proposal to partner with you in the purchase of the property pursuant to your TOPA rights. They are ready, willing and able to do so. I have represented this client in a variety of transactions for over 30 years. They are well established and funded.

I understand that your landlord did not offer you an opportunity to match the current purchase offer on the property. While single family residences are exempt from TOPA, on July 3, 2018 the city passed legislation that states single family residences are not exempt from TOPA if they are occupied by elderly or disabled tenants. My understanding is at least one current tenant is 62 years of age or older. Therefore, I am confident that you have TOPA rights which have been violated. I understand you have pending litigation in the Superior Court for the District of Columbia and expect to obtain relief for the subsequent fulfillment of the Sellers' duties under TOPA. When the TOPA process commences, we are prepared to move forward immediately at that time.

We look forward to hearing from you so that we can begin to assemble this transaction.

Sincerely,

Peter Mallios Independent Broker

7517 Hackamore Drive • Potomac MD 20854 • 202-374-0123 • pete@malliosrealty.com