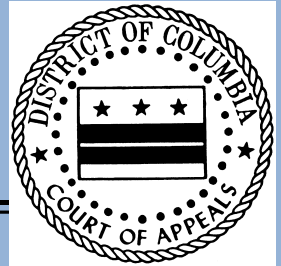


No. 23-CV-271



In the
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Court of Appeals

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POTOMAC PLACE ASSOCIATES, LLC, *Appellant*

v.

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

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

REPLY BRIEF OF APPELLANT
POTOMAC PLACE ASSOCIATES, LLC

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May 13, 2024

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I. INTRODUCTION

Appellee Mendez’s brief is an entreaty for sympathy and not a defense of the Trial Court’s judgment, much less a reasoned analysis of the controlling statute.¹ There is no basis in the Rental Conversion and Sale Act of 1980 (the “Act”) to extend Ms. Aparicio’s protected head of household status to Mr. Mendez or Mr. Castillo. Mr. Mendez relies on the Act as it exists today for protections that he personally could not have claimed on the date of the conversion election. The Court should apply the plain language of the Act as it existed at the time of the conversion election, as pronounced in *Redman v. Potomac Place Associates LLC*, 972 A.2d 316 (D.C. 2009), and reverse the Trial Court’s decision with instruction to enter a non-redeemable judgment for possession in favor of Potomac Place.

II. ARGUMENT

A. **EXTENDING THE PROTECTIONS OF THE ACT TO THE ENTIRE HOUSEHOLD CREATES NEW SUBSTANTIVE RIGHTS NOT CONFERRED BY ITS PLAIN LANGUAGE.**

Mr. Mendez argues that this Court should extend the “head of household” and “elderly tenant” status to the entire household. *See* Appellee Brief (hereinafter “App. Br.”) at 20-21. There is no support for this in the Act. It requires the Court to create

¹ “But, of course, judges take an oath not to make decisions based on sympathy, bias, or favoritism, but based on the facts and the law. *Pederson v. Wirth*, 2003 D.C. Super. LEXIS 33, *8 (D.C. Super. Ct. 2003).

new substantive property rights not contained in the Act, its progeny, or interpreting case law.

When the conversion election occurred in November 2005, the Act's plain language conferred a personal property right on a qualified head of household as of the date of the request for the conversion election. *See* D.C. Code §42-3402.08(c) (2001). Mr. Mendez's interpretation reads out the singular "a" from the Act and renders it meaningless or superfluous. *See id.* ("For purposes of this subchapter, the term 'elderly tenant' means *a head of household* who is 62 years of age or older.") (emphasis added). Mr. Mendez's interpretation (reading out words) is disfavored by this Court. *See, e.g., Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1274-75 (D.C. 1997).² Even under the current version (and post-2005 versions) of the Act, the tenants in a unit must select *a head of household*, and the protection from eviction is a personal property right of that designated head of household. *See* D.C. Code §42-3402.03(d)(1)(C) and D.C. Code §42-3402.08(c).³

² For example, under applicable Internal Revenue Service rules, only one taxpayer may claim a qualified person on their tax return as a head of household. *See* IRS Publication 501 (2021), Dependents, Standard Deduction, and Filing Information at Table 4, footnote 1, *available at* https://www.irs.gov/publications/p501#en_US_2023_publink1000220823 ("A person can't qualify more than one taxpayer to use the head of household filing status for the year.").

³ *See, e.g.,* D.C. Code §42-3402.08(c)(1) (2006); D.C. Code §42-3402.08(c)(1) (2007); D.C. Code §42-3402.08(c)(1) (2009); D.C. Code §42-3402.08(c)(1) (2019).

If this Court interprets the Act to cover all members of the qualified head of household's tenancy it creates a new class of protected tenants – co-tenants who are themselves ineligible for statutory protection from eviction on the date of the condominium conversion election. This was not contemplated by the Act. *See Parreco v. D.C. Rental Hous. Comm'n*, 567 A.2d 43, 44 (D.C. 1989) (“Neither the Commission nor this court is authorized to read into an unambiguous statute language that is not there, or to rewrite legislation to make it more ‘equitable’ or ‘fair.’”).

B. THE DEATH OF A LESSEE IS NOT THE GROUNDS FOR EVICTION IN THIS CASE.

Mr. Mendez argues that the death of Ms. Aparicio is the grounds for eviction in this case. *See App. Br.* at 11-12. False: the basis for eviction is the expiration of the statutory personal life tenancy created by the Act and Mr. Mendez's (and Mr. Castillo's) subsequent failure to either purchase the condominium unit or to move out. The conversion election was conducted and certified in 2005 – at which time Ms. Aparicio was one of the listed qualified low-income elderly tenants, and the Landlord could not, and did not, issue a 120-Day Notice of Intent to Convert or 30-Day Notice to Vacate. As contemplated by the Act, the tenancy continued uninterrupted for the next thirteen years until she passed away and her personal statutory life tenancy expired.

Mr. Mendez argues (in App. Br. at pp. 14-15) that the 120-Day Notice of Intent to Convert served on Mr. Mendez (and Mr. Castillo) in 2019 is untimely for a condominium conversion that occurred in 2006 and there has been no “second condominium conversion” or “re-conversion” that triggers a new notice of *intent* to convert. No such process exists. The conversion from apartment community to condominium was completed on November 28, 2005 – the date of the tenant election as certified by the District on November 30, 2005. There is no such thing as a second condominium conversion or reconversion, except in Mr. Mendez’s attempt at barristerial alchemy.

C. THE TENANT’S CLAIMED “RIGHT TO AUDIT” IS A RED HERRING.

Mr. Mendez argues that a tenant who qualifies as a protected tenant at the time of the conversion election cannot subsequently lose that protection by a change in circumstances (*e.g.*, the protected tenant wins Powerball and is no longer considered low income; the protected tenant undergoes a since invented surgical procedure and is no longer considered disabled). App. Br. at 16-17. We agree, but only for the duration of the protected tenant’s natural life in residency in that unit.

At the time of the conversion, Ms. Aparicio was the only tenant meeting the qualifying criteria under D.C. Code §42-3402.08 (2001). Ms. Aparicio enjoyed uninterrupted use of the apartment for the remainder of her life; the Landlord’s ability to sell the unit was on indefinite hiatus until Ms. Aparicio’s personal statutory

protection ended. This is no audit here; only the previously created and deferred right to recover possession and sell the unit. Does Mr. Mendez believe he could remain in the unit if Ms. Aparicio voluntarily moved out (*e.g.*, to a nursing home) or was lawfully evicted for non-payment of rent or breach of obligation of tenancy? The absurdity of his argument is palpable.

D. THE TENANT’S PROTECTED STATUS UNDER THE CURRENT VERSION OF THE ACT IS IRRELEVANT.

Mr. Mendez’s status as a protected tenant under the current version of the Act is irrelevant. *See* App. Br. at 26-27. The Act is specific that the tenant must qualify as a protected tenant at the time of the election. D.C. Code §42-3402.08(c)(1). Mr. Mendez may not now claim protected tenant status he could not have claimed at the time of the election – unless the City Council made the subsequent amendments to the Act retroactive.

This Court specifically declined to apply retroactive application of subsequent amendments to the Act in a case involving the same property and conversion election. *See Redman v. Potomac Place Associates LLC, supra; see also Parreco, supra*, 567 A.2d at 49-50 (“If the Council perceives such unfairness, or if it intended a result different from the one we reach, a remedy may easily be fashioned.”). Like *Redman*, Mr. Mendez was not a “tenant” subject to the protection from eviction within the meaning of the statute at the time of the conversion. *See id.* at 321 (“[W]hen the amendment protecting disabled tenants took effect, Ms. Redman was

not a ‘tenant’ subject to the prohibition on eviction within the meaning of the statute.”). Mr. Mendez’s protection from eviction was tied to the personal property right afforded to Ms. Aparicio under the Act as it read in November 2005 provided Ms. Aparicio remained a tenant. Such protection from eviction expired upon Ms. Aparicio’s passing on January 23, 2019.

III. CONCLUSION

For the foregoing reasons, the decision of the Trial Court should be reversed with directions to enter a non-redeemable judgment for possession in favor of Potomac Place.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: May 13, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2024, a copy of this Reply was served on Mr. Mendez's counsel via DCCA's e-filing system, and by 1st class mail, postage prepaid, on Fernando Castillo, 800 4th Street SW, #N720, Washington, D.C. 20024.

/s/ Joshua M. Greenberg
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