Nos. 23-CV-0150; 23-CV-0151

In the
District of Columbia Court of Appeals

CHASTLETON COOPERATIVE ASSOCIATION,

Appellant,

v.

KAWAMOTO NOTES, LLC, RFB PROPERTIES II, LLC,

Appellees.

Appeal from the Superior Court of the District of Columbia, Civil Division Nos. 2019 CA 008500-B; 2017 CA 008364 B
(Hon. Ebony Scott, Judge)

REPLY BRIEF OF APPELLANT

Michael J. Goecke
LERCH, EARLY & BREWER, CHARTERED
7600 Wisconsin Avenue, Suite 700
Bethesda MD 20814
(301) 986-1300
mjgoecke@lerchearly.com

Counsel for Appellant

COUNSEL PRESS, LLC (202) 783-7288 * (888) 277-3259

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REPLY BRIEF OF APPELLANT
CHASTLETON COOPERATIVE ASSOCIATION, INC.

I. ARGUMENT

The Superior Court awarded partial summary judgment to Appellees Kawamoto Notes, LLC ("Kawamoto") and RFB Properties II, LLC ("RFB") (collectively "Appellees") in part because it found that Kawamoto had the right to enforce the Recognition Agreement. Appellees' arguments on appeal are again founded on their contention that Kawamoto and RFB may enforce the Recognition Agreement. This Court should vacate the trial court's orders, and remand these cases for further proceedings—allowing Chastleton Cooperative Association, Inc. ("Chastleton") to have its day in court—because neither Kawamoto nor RFB is empowered to enforce the Recognition Agreement.

A. Kawamoto is not a signatory or assignee of the Recognition Agreement.

It is undisputed that Kawamoto was not a signatory to the Note or the Recognition Agreement. A338; A340-A343. And nothing in the record shows that Bank of America assigned any right to Kawamoto. Yet Appellees contend that "around January 2019, Bank of America assigned its right in the Note and all rights associated therewith to Kawamoto." RFB App. Br. 9; Kawamoto App. Br. 21.

Appellees' argument fails because the record contains no document supporting their claims. Appellees rely entirely on unverified allegations in their

pleadings, and the documents found at A345-A348. None of these documents involves Bank of America assigning any right to Kawamoto, or anyone else.

The documents Appellees rely upon relate to transactions between The Federal Home Loan Mortgage Corporation ("Freddie Mac") and RFB. A345 is a purported "Assignment of Property Lease" between Freddie Mac and RFB, in which Freddie Mac agrees to transfer any interest it has in the Lease to RFB "in exchange for (1) the consideration provided in the parties' Confidential Settlement and Release Agreement and (2) Sale Assignment Agreement." *Id.* A346 is titled "Stock Power" and purports to transfer Freddie Mac's interest in the Stock to RFB. *Id.* Neither of these documents refers to Bank of America or Kawamoto. In addition, these documents cannot support Appellees claim that Bank of America assigned the Recognition Agreement because the documents are dated October 9, 2018, which is *three months* before the January 2019 date that Appellees allege Bank of America purportedly assigned its interests to Kawamoto. A348 is another document between Freddie Mac and RFB that does not involve any purported transaction between Bank of America and Kawamoto. In fact, the documents Appellees rely on confirm Bank of America *did not* assign the Recognition Agreement to Kawamoto. A345-A348.

B. Kawamoto's security interest as a Note Holder does not provide it with rights under the Recognition Agreement.

RFB contends that Kawamoto may enforce the Recognition Agreement as the Note Holder, arguing that Kawamoto is "entitled to enforce all collection rights to the indebtedness of the Note and stands in the shoes of the original beneficiary of the Security Interest." RFB App. Br. at 9-10. Kawamoto argues that: "[a]s possessor of the Note endorsed in blank, Kawamoto is entitled to enforce all collection rights to the indebtedness of the Note and stands in those of the original beneficiary of the Security Interest." Kawamoto App. Br. at 10. And that "security interests accompany the transfer of the note, even when no 'formal assignment' has taken place." Kawamoto App. Br. 22. Kawamoto also contends that when it "obtained physical possession of the Note, the right to enforce the Loan Security Agreement followed." *Id.* Kawamoto then makes a significant leap of logic—arguing that "the Recognition Agreement also follows the transfer of the Note." *Id.* This is not correct. Neither the D.C. Code, the Note, nor relevant case law expands a note holder's security interest to include contractual rights with third-parties.

1. The Note Holder's Rights are governed by the Loan Security Agreement.

Under a traditional mortgage agreement for real property, a lender obtains an interest in real property to secure the underlying Note. The process for housing

cooperatives is different because the purchaser is buying stock in a corporation, and entering into a lease to occupy a specific unit in the cooperative building. When Sipek borrowed money from Bank of America, the loan was secured not by real property, but by the Stock and the Proprietary Lease.

The Note empowers the Note Holder to collect unpaid principal and interest and late fees from Sipek. A166-A168. It also provides the Note Holder with the ability to enforce the Note under a Security Instrument that was executed contemporaneously with the Note:

> In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if [Sipek does] not keep the promises which [she made] in this Note.
>
> A167.

The Security Instrument referenced in the Note is the Loan Security Agreement. A169-A171. The Loan Security Agreement is consistent with Sipek's purchase agreement and confirms that the security for the Note is the Stock and the Lease:

> Borrower has simultaneously, with this Agreement, deposited with the Lender ***the Stock and the Lease and as security for the payment of the debt,*** Borrower hereby grants to the Lender a security interest in, and a general lien upon, said Stock and Lease and all personal property and fixtures (other than household furniture and furnishings) of the debtor now or hereafter attached to, or used in connection with, the apartment (collectively called the "SECURITY").

(capitalization in original) (emphasis added) A169.

The Loan Security Agreement expressly provides that the "Stock and the Lease" are the "security for the payment of the debt" and grants the Note Holder certain rights in that security. *Id*. ***Importantly, neither the Note nor the Loan Security Agreement reference or provide the Note Holder with any express rights in the Recognition Agreement***. A166-71.

The Loan Security Agreement also sets forth the order of priority for distributions of foreclosure sale proceeds. A170. The proceeds are first used to reimburse the Lender for expenses of sale, including reasonable attorneys' fees, commissions and taxes, and to pay Chastleton for sums owed under the Lease. A170. The remaining funds are then used to discharge any debt owed by the borrower:

> In the case of any sale, the Lender may first deduct all expenses of sale and delivery of the Security, including, but not limited to, reasonable attorneys' fees, brokerage commissions and transfer taxes, and also all sums paid to the Corporation pursuant to the terms of the Lease or, upon termination of the Lease, pursuant to any new lease issued in replacement of the Lease, and may then apply the remainder to any liability of Borrower under the Note and this Agreement, and shall return the surplus, if any, to Borrower.

A81; A170.

The Loan Security Agreement provides the Note Holder with a security interest, but it also makes clear that Chastleton's right to collect payments has priority over the Note Holder's right to discharge the borrower's debt. *Id.*

2. The Recognition Agreement does not apply.

The Recognition Agreement contains a different order of priority for the foreclosure sales proceeds by granting the cooperative a "super-priority" lien to a three-month period. A174. Kawamoto acknowledges that the Loan Security Agreement's "sale provision has more favorable language [to Chastleton] for distribution therein." Kawamoto App. Br. 24, fn. 9. For this reason, Kawamoto seeks to enforce the Recognition Agreement, and to leap-frog and extinguish Chastleton's interest in the sales proceeds.

Any security interest Kawamoto has in the Stock or the Lease does not empower it to enforce a contract to which it was neither a signatory nor assignee. *See* A166-68; A169-71. The Note and Loan Services Agreement provide a holder with a security interest in the Stock and the Lease; they do not provide the note holder with any contractual rights to enforce the Recognition Agreement. *Id.* Kawamoto has no right to enforce the Recognition Agreement. A447-49.

3. The common law does not support Appellees' arguments either.

Appellees rely on several cases to support their contention that Kawamoto's security interests extend to the Recognition Agreement. All of the cases Appellees rely on are factually distinguishable from this dispute, and none of them establish that Kawamoto can enforce the Recognition Agreement. The cases do, however, show why Appellees' arguments fall short.

The case Appellees cite to that may be most analogous to this dispute is *ALH Properties Ten, Inc. v. 306-100th Street Owners Corp.,* 191 A.D. 2d 1, 15-16 (1993). That case involved a dispute between a housing cooperative corporation and a lender. The lender's note was secured by unsold shares of the corporation. After the borrower stopped paying fees to the cooperative corporation and defaulted on its obligations under the note, the lender foreclosed on and sold the stock shares. The cooperative corporation sought to enforce its lien on the borrower's nonmaintenance obligations. The parties filed cross-motions for summary judgment. The trial court granted the lender's motion, and denied the cooperative corporation's motion, finding that the cooperative corporation did not have a security interest in the shares. 191 A.D. at 3-6.

The "primary issue" on appeal was "the viability and extent of the corporation's lien (for obligations other than maintenance), upon the unsold shares" that were sold at a foreclosure sale. 191 A.D. at 3. The Court examined the parties' rights under the cooperative's bylaws and governing documents, as well as a Recognition Agreement entered into between the parties. After examining the record and these documents, the Court held that "the cooperative corporation's lien . . . for nonmaintenance obligations, which is stated in both the bylaws of the corporation and by endorsement of the shares, is enforceable, and

has priority [over the note holder]." *Id.* The Court then reversed and remanded the trial court's decision. 191 A.D.2d at 17–18.

ALH is a New York case that is not binding on this Court. It is also distinguishable from this case in other ways. *ALH* involved a dispute over whether, as a threshold matter, the cooperative's interest in the unpaid fees was a security interest. Here, there is no dispute that Chastleton has a valid interest in the unpaid fees; the dispute is over the priority of the parties' interests. In *ALH,* the parties were also signatories to the relevant Recognition Agreement. Here, the original signatory to the Recognition Agreement, Bank of America, is not a party to this dispute.

ALH also involves facts similar to the case at hand, and is therefore instructive. In *ALH*, the cooperative corporation had a lien on the unpaid fees of its shareholder. Here, Chastleton has a lien on unpaid fees from a shareholder. In *ALH*, the lender had a security interest in shares of the corporation, and foreclosed on them when the borrower defaulted under the Note. Here, Sipek defaulted under the Note, and Freddie Mac initiated foreclosure proceedings, and sold Sipek's Stock and Lease at public auction. In *ALH*, the lender argued it had priority over the cooperative's interest in the sales proceeds. Here, Kawamoto argues its interest takes priority over the Chastleton's interest.

Based on these factors, and relying on the relevant documents in that case, the appellate court in *ALH* reversed the trial court and held that the cooperative's interest was superior to the interest of the note holder. The similarities with *ALH* provide support for this Court to also find that Chastleton's interest in the unpaid fees has priority over Kawamoto's security interest in those same shares. Merely because Kawamoto has a security interest in the Stock and the Lease does not mean that it takes prior to other lienholders.

Appellees also rely on *Chase Plaza Condominium, Ass'n, Inc. v JP Morgan Chase Bank, N.A*., 98 A.3d 166, 170 n2 (D.C. 2014), in which the District of Columbia Court of Appeals held that the holder of a note indorsed in blank has standing to enforce it. That case, however, did not involve or address whether the Note Holder's security interest also extended to provide it with contractual rights in an ancillary contract like the Recognition Agreement at issue here.

In *Chase Plaza,* JPMorgan was in possession of a note indorsed in blank, which was secured by a unit in a condominium association. The borrower failed to pay association fees and also defaulted under the mortgage. As a successor note holder, JPMorgan sued to set aside a condominium association's foreclosure sale on the unit. The condominium association agued the note holder lacked standing to enforce the note, but the Superior Court disagreed. It found the note holder had standing, and granted partial summary judgment to the note holder.

On appeal, this Court agreed that JPMorgan, as note holder, had standing to pursue claims because it had physical possession of the note, which was indorsed in blank. The Court, citing D.C. Code §§ 28:3-301 and 28:3-205(b), explained that: "An indorsement in blank is essentially a stamp that indorses an instrument without specially indorsing it to a specific party. Usually it makes that instrument payable to the bearer and transfers with it legal title to security attached to the instrument." *Id.* at 169-70.

Kawamoto relies on this passage to argue it may enforce the Note, has a security interest in the Loan and Stock, *and* that its security interests also extends to the Recognition Agreement. Kawamoto overstates the holding in that case. But the *Chase Plaza* Court did not address whether the Note Holder's security interest extended to any other documents like the one at issue here. That Court merely found that the note holder had standing to enforce the note, and to proceeds from the sale of the security. 98 A.3d at 169-70.

While the court in *Chase Plaza* found that the note holder had a security interest in the property and the sales proceeds, it also found that the condominium association had a superior interest to the proceeds, and that the condominium association's interest took priority over the note holder's security interest. 98 A.3d at 172-73. The issue in that case was how to apply §42-1903.13 of the District of Columbia Condominium Act (the "Act") to the sales proceeds. The Court noted

that the Act allowed a condominium association to impose a lien against a unit for non-payment of condominium-association assessments. It explained that the lien is "prior to any other lien or encumbrance except [among other things,] ... [a] first mortgage ... or [first] deed of trust ... recorded before the date on which the assessment sought to be enforced became delinquent [.]" 98 A.3d at 173 (citations omitted). The priority, however, only applies to the most recent six months of condominium assessments. *Id.* After applying the "super-priority" lien for the most recent six months of assessments, there were no proceeds left to distribute to the note holder. The *Chase Plaza* Court found that the note holder's lien was junior to the condominium association's lien, and that because there were not sufficient funds to satisfy both liens, the note holder's lien in the security was extinguished: "Taken together, the language of D.C. Code § 42–1903.13(a)(2), general principles of foreclosure law, and the legislative history of the provision support a conclusion that Chase Plaza's foreclosure pursuant to the super-priority lien extinguished JPMorgan's first deed of trust." *Id. at* 175. The Court held that "a condominium association can extinguish a first deed of trust by foreclosing on its six-month super-priority lien under [the Act]." *Id. at 178.*

The facts in *Chase Plaza* are different than the facts here. In that case, the dispute was over competing security interests in a condominium unit. Here, the dispute is over competing interests in a cooperative unit. In *Chase Plaza*, the

Court analyzed how the Act affected priority of competing lienholders. Here, there is no comparable statute governing sales proceeds. Despite these and other differences, however, *Chase Plaza* shows that even when a note holder has the right to enforce the note and obtains a security interest in property, it does not guarantee that the note holder will receive any distributions. Just as the note holder's rights in *Chase Plaza* were secondary to the rights of the condominium association under the Act, Kawamoto's rights in the security are secondary to that of the Chastleton under the Loan Security Agreement. A170.

Kawamoto's reliance on *Rose v Wells Fargo Bank, N.A.*, 73 A.3d 1047, 1052 (D.C. 2013) is also misplaced. In that case, Wells Fargo, as the bearer of a specially endorsed note, foreclosed on a dwelling owned by a deceased borrower. The Personal Representative of the borrowers' estate sued to void the foreclosure, contending that the foreclosure was defective because foreclosure sales are subject to a strict compliance standard and that Wells Fargo's notice of the sale was defective. According to the court, "[t]he major issue in this appeal is whether the notice of foreclosure was defective . . .". 73 A.3d 1047, 1048.

The court analyzed the "strict compliance" requirements under foreclosure law, and explained that the purpose of requiring a party to record its interest was primarily to protect subsequent bona fide purchasers. It found the requirement to record an interest was not otherwise meant to affect property rights, such as the

right to foreclose on a security interest. *Id.* The court also noted that "security interests accompany the transfer of a note, even when no 'formal assignment' has taken place." *Id.* at 1052. And that D.C. Code §28:3-203(b) "vests in the transferee any right of the transferor to *enforce the instrument*." (emphasis added) *Id.* The court declined to void the foreclosure. *Id.* at 1053.

The *Rose* court did not address the priority of distributing foreclosure sales proceeds between competing claimants. Nor did it address whether Wells Fargo's security interest in *the security instrument* also provided it with contractual rights in an ancillary contract. It merely repeated the general rule that a note holder has all rights under a security instrument that the prior party in interest had. It did not expand that right to include ancillary contracts.

Finally, Kawamoto cites to a footnote in *Smith v. Wells Fargo Bank* to contend it has rights under the Recognition Agreement. Kawamoto App. Br. 22 (citing *Smith v. Wells Fargo Bank*, 991 A.2d 20, 30 n. 19 (D.C. 2010)). But that notation merely repeats the general notion that a note holder has an interest in the security in the note; it does not hold, establish, or even address whether a note holder obtains all contractual rights in an ancillary contract, or how that might affect distribution of sales proceeds from a foreclosure sale. *See, id.*

C. RFB cannot enforce the Recognition Agreement.

RFB claims that it, too, may enforce the Recognition Agreement, contending that it is the holder of equitable title to the Shares and that it "stands in the shoes of the former owner and can exercise the rights that the former owner may have had in the security." RFB App. Br. 23. This argument fails for several reasons. As with Kawamoto, RFB has no standing to enforce the Recognition Agreement because it was not a signatory or assignee of that agreement. RFB does not allege or establish any agreement with Sipek in which she assigned RFB any interest in the Recognition Agreement. In addition, the parties' joint pretrial statement stipulates that On August 3, 2013, Sipek surrendered possession of the Property to the Chastleton along with all her right, title, and interest in the Shares. Amended Joint Pretrial Statement, p. 6. And, as RFB argued in support of its Motion for Summary Judgment, Sipek no longer has any rights in the Recognition Agreement because she did renunciate, disclaim, and waive any and all rights or interests in the propriety documents, the Unit, or any other interest relating directly or indirectly to the Unit or the disposition or sale of the proprietary documents. A53.

RFB's claim to the Recognition Agreement is even further removed than Kawamoto's because RFB bid on the Proprietary Documents—the Stock and the Lease—it did not purchase or acquire the Note. Even if RFB had standing to enforce the Recognition Agreement, its argument still falls flat because any rights

Sipek may have had under the Recognition Agreement are not relevant. This dispute involves competing claims to the proceeds from the foreclosure sale caused by Sipek's default. There are not enough proceeds to discharge all debts incurred by Sipek, and thus Sipek has no rights or interest in the sales proceeds. Perhaps for this reason RFB identifies no rights that Sipek had which RFB is seeking to enforce.

RFB's argument that it may enforce the Recognition Agreement as a third party beneficiary also lacks merit. RFB concedes that it is not a named beneficiary, and does not argue that the Recognition Agreement provides any express rights to a purchaser at a foreclosure sale. RFB App. Br. 24-25. RFB instead argues that it is an implied third party beneficiary under the Recognition Agreement because "implicit in such an agreement is that the person who is the purchaser has the right to make sure that the lender and Chastleton comply with their obligations to ensure that valid title is conveyed." *Id.* at 25. The Recognition Agreement governs the rights between the Chastleton, its shareholder, and the lender; it is not designed or intended to provide protection or rights to third party purchasers at a foreclosure sale. To the contrary, the Recognition Agreement is designed to provide protection and benefits to the Chastleton and Bank of America. RFB's argument that the Recognition Agreement was intended to benefit purchasers at foreclosure sale is not supported by the four corners of the document, or common sense.

RFB also mischaracterizes Chastleton's position regarding who has rights under the Recognition Agreement. RFB argues that in Chastleton's view, *no one* has standing to enforce the Recognition Agreement. RFB App. Br. 23, fn. 11. Not so. Bank of America is a signatory to the Recognition Agreement and may enforce that agreement. In order for a non-signatory like Appellees to be able to enforce the Recognition Agreement, however, it must show it is an assignee of the Recognition Agreement. Appellees have not met this burden, as there are no documents in the record showing Bank of America assigned any rights under the Recognition Agreement.

D. Chastleton preserved its arguments for appeal.

Appellees argue this Court should not consider Chastleton's legal arguments because they were not made below and are therefore waived. This is not correct. Chastleton's undersigned appellate counsel did not participate in the proceedings below, but is well-aware (as counsel for Appellees should be) that Chastleton presented its key arguments on appeal to the trial court.

1. Chastleton preserved its arguments that neither Kawamoto nor RFB could enforce the Recognition Agreement.

Chastleton's primary argument on appeal is that neither Kawamoto nor RFB have standing to enforce the Recognition Agreement. Chastleton began arguing this point as soon as Kawamoto attempted to intervene because Kawamoto had no

documents showing it had any interest in the Note or the security. Plaintiff's Opposition To Successor-In-Interests Motion For Substitution Or In The Alternative To Intervene, p. 1-2. When Kawamoto argued it was the Note Holder and successor to Freddie Mac, Chastleton pointed out that the case had been pending for two years and that neither Freddie Mac nor Bayview, as successors to Bank of America, ever indicated they had transferred their interest to Kawamoto or any other entity. *Id.*

Chastleton also argued that Kawamoto had provided no proof that it was a successor in interest to the lender or its assignees, or that it had any interest in the dispute. Chastleton's opposition expressly "challenges [Kawamoto]'s claims that it is the successor in interest to [Freddie Mac] or Bayview." *Id.* Chastleton further argued that "Kawamoto "has not set forth even a prima facie showing that it has standing to seek [] relief" in the pending litigation. *Id.* The issue of standing was also discussed in open court at multiple hearings. *See, e.g.* Transcript of Hearing on February 20, 2020, pp. 5, 7, 9. In addition, Chastleton presented these arguments again in its Motion for Reconsideration. A322-A329.

Chastleton opposed RFB's Motion for Summary Judgment on similar grounds, stating that "the Recognition Agreement is a contract between the Cooperative, the bank and the borrower (Sipek)" and that [RFB] is not a party to or privy to the Recognition Agreement. A58. It further argued that the Recognition

Agreement provided no third party rights to RFB and that RFB had no right to enforce that agreement. A58.

2. Chastleton preserved its argument that the foreclosure notices were defective under D.C. Code 42-815.

Chastleton opposed RFB's Motion for Summary Judgment because they "failed to meet legal and contractual obligations prior to selling the property interests at foreclosure sale." A57. Chastleton expressly argued that the lender or its successors "failed to comply with the Recognition Agreement, did not have possession of the cooperative shares to sell in the first instance, and failed to comply with the mandates of D.C. Code § 42-815 *et seq*. and thus, had no power or right to sell Unit 654 at auction." A59. Chastleton also disputed that Freddie Mac provided property notice of the sale to all parties in interest. A62.

Appellees argue that Chastleton did not argue to the trial court that there were deficiencies in lender's foreclosure notice, but RFB concedes that Chastleton argued that it had no knowledge about the foreclosure sale, and that it was disputing "the circumstances surrounding the sale." A105; Plaintiff's opposition to Bayview Loan Servicing, LLC and Federal National Mortgage Association's Motion for Summary Judgment, p. 2. RFB ignores the fact that Chastleton disputed RFB's "assertions surrounding the closing of the sale because the sale was not valid giving the fact that [Chastleton] was never notified of the same." *Id.*

E. Any inconsistency between the Bylaws and the Recognition Agreement are not relevant.

Finally, Kawamoto argues that an inconsistency between Chastleton's Bylaws provide that when the Board approves a Recognition Agreement, the terms of the Recognition Agreement take priority over the Bylaws if there is any inconsistency with the Bylaws." Kawamoto App. Br. 24. Kawamoto is confusing the issues. Chastleton is not contending there is any discrepancy between the Bylaws and the Recognition Agreement that must be resolved; Chastleton contends that Kawamoto has no right to enforce the Recognition Agreement. Even if Kawamoto as Note Holder has a security interest in the Stock and the Lease, that does not provide Kawamoto with any contractual rights in the Recognition Agreement. Kawamoto's rights, if any, are provided by the Note and the Loan Security Agreement, which provide that the note holder's right to proceeds from a foreclosure sale of the security is secondary to Chastleton's right to collect unpaid fees.

Respectfully submitted,

LERCH, EARLY & BREWER, CHARTERED

By: /s/ Michael J. Goecke

Michael J. Goecke (D.C. Bar No.: 485999)
7600 Wisconsin Avenue, Suite 700
Bethesda, Maryland 20814
mjgoecke@lerchearly.com
(301) 907-2805 (Telephone)

Counsel for Appellant
Chastleton Cooperative Association, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2024, I filed the Reply Brief of Appellant with the Clerk of the District of Columbia Court of Appeals. I further certify that the Reply Brief was served this 23rd day of January, 2024, via the D.C. Court of Appeals E-filing system.

/s/ Michael J. Goecke
Michael J. Goecke (D.C. Bar No.: 485999)

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

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

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

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

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

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

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

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

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

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

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

/s/ Michael J. Goecke
Signature

Michael J. Goecke
Name

mjgoecke@lerchearly.com
Email Address

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Case Number(s)

01/23/2023
Date