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In the District of Columbia
Court of Appeals

JOHN D. MUSSELLS, ET AL.,

Appellants,

v.

MICHAEL JOHN FURMAN LIVING TRUST, ET AL.,

Appellees.

On Appeal from the Superior Court of the District of Columbia
Case No. 2016-CA-008570-B before the Hon. Maurice A. Ross

BRIEF OF APPELLEE

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STATEMENT PURSUANT TO RULE 28(A)(2)(A)

The parties in this case are John D. Mussells and Premila Mussells; The Michael John Furman Living Trust and its trustees, Michael Jude Grippo and Laurie Ann Furman; and 1305 Rhode Island Ave NW LLC.

At trial, and on appeal, John D. Mussells and Premila Mussells are represented by Kenneth C. Crickman, Esq.

At trial, and on appeal, The Michael John Furman Living Trust, Michael Jude Grippo, and Laurie Ann Furman are represented by Carol S. Blumenthal, Esq. and Kathryn Erklauer, Esq.

At trial, and on appeal, 1305 Rhode Island Ave NW LLC, is represented by the undersigned, Robert C. Gill, II, Esq. On appeal, 1305 Rhode Island Ave NW LLC is also represented by Kyra A. Smerkanich, Esq.

RULE 26.1 CORPORATE DISCLOSURE

Pursuant to Rule 26.1, Appellee states that it does not have a parent corporation and that there are no corporations that hold 10% or more of Appellee's stock.

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear the instant appeal pursuant to D.C. Code § 11-721. The D.C. Superior Court entered a final Judgment Order on August 8, 2023, which awarded 1305 Rhode Island Ave NW LLC attorneys' fees and costs in the amount of \$154,195.89.

QUESTION PRESENTED

1. Did the lower court correctly, and within its sound discretion, award attorneys' fees and costs where the motion for such fees and costs was timely filed pursuant to Superior Court Rule 54(d) and permitted by the District of Columbia Tenant Opportunity to Purchase Act ("TOPA"), D.C. Code §§ 42-3404.01 *et seq.*?

STATEMENT OF THE CASE

This appeal is the second time this case has been before this Court. The Court previously resolved the underlying merits in *1305 Rhode Island Ave NW, LLC v. Mussells*, 292 A.3d 212 (D.C. 2022) (“*Mussells I*”). This most recent iteration presents a narrow and straightforward issue arising from this Court’s earlier orders directing the lower court to undertake “further proceedings, . . . including consideration of . . . requests for attorney’s fees and costs.”

Because 1305 Rhode Island Ave NW LLC (“1305 LLC”) timely sought attorneys’ fees and costs allowable under the District of Columbia Tenant Opportunity to Purchase Act, D.C. Code §§ 42-3404.01 *et seq.* (“TOPA”), the lower court properly, and within its sound discretion, awarded 1305 LLC with attorneys’ fees and costs in the amount of \$154,195.89. This Court should affirm the decision of the lower court in all respects.

STATEMENT OF FACTS

Mussells I

The facts necessary to address this appeal begin with this Court’s Orders entered in *Mussells I*. The first Order issued by this Court was dated December 2, 2022 (“December 2 Order”). App’x. 0052–53.¹

¹ Documents in the Appendix filed with Appellants’ Brief are cited as “App’x. ----” indicating the page in the Appendix where the document is located. Despite the requirements of Rule 30, Appellants did not confer with Counsel for Appellee

In pertinent part, the December 2 Order provided that this Court:

ORDERED that the Superior Court judgment in favor of [the Mussells] is reversed and these cases are ***remanded to the Superior Court with instructions to enter judgment*** in favor of [1305 LLC] and an order granting specific performance of the sales contract for the property between [the Mussells] and the Trust. It is

* * *

FURTHER ORDERED that these cases are ***remanded to the Superior Court for further proceedings consistent with this order*** and to address the counterclaim by [Mussells] for attorneys' fees and costs.

App'x. 0052–53 (emphasis added in bold).²

Shortly after the December 2 Order, this Court issued an Amended Order on December 22, 2022 (“December 22 Amended Order”). App'x. 0054–55. This Order was in response to the Unopposed Motion to Clarify or Amend Order filed by Appellees Michael Jude Grippo and Laurie Ann Furman, Trustees of the Michael John Furman Living Trust (“Trustees”), which noted that the reference to the

regarding the contents of a Joint Appendix, and, as such, a significant amount of key documents—documents Appellees would have requested be included, had they been consulted—are missing. For this reason, Appellees are filing herewith a supplemental appendix of documents, cited as “Supp. App'x ----”.

² As further explained below, the Court subsequently amended its December 2 Order on December 22, 2023. As a result, the language of the December 2 Order is not operative. Notwithstanding this, Appellants' brief cites extensively to the Court's superseded December 2 Order as though it were the controlling Order in this case. It is not.

Mussells’ counterclaim appeared to have been “in . . . error” as “[t]he Mussells were plaintiffs below and had . . . no counterclaim.” Supp. App’x 9; 15.

Thus, the Court’s December 22 Amended Order modified language from the December 2 Order and provided, in pertinent part:

ORDERED that the Superior Court judgment in favor of [the Mussells] is reversed and the case is ***remanded to the Superior Court with instructions to enter judgment*** in favor of [1305 LLC] and an order granting specific performance of the sales contract for the property between [the Mussells] and the Trust. It is

* * *

FURTHER ORDERED that the case is ***remanded to the Superior Court for further proceedings consistent with this order***, including consideration of pending counterclaims and ***requests for attorney’s fees and costs***. See D.C. Code § 42-3405.03 (“An aggrieved owner, tenant, or tenant organization may seek enforcement of any right or provision under this chapter . . . and, upon prevailing, may seek an award of costs and reasonable attorney fees.”); Super. Ct. R. Civ. Pro. 54(d)(2)(B)(i).

App’x. 0054–55 (emphasis added in bold). Notably, this Court could have—but did not—limit the Superior Court’s “further proceedings” to only the Trustees’ claim for attorneys’ fees.

On December 27, 2022, the Court of Appeals issued a mandate, which was received by the Superior Court on December 29, 2022. Supp. App’x 7; 13.

Proceedings on Remand to the Superior Court

The Mussells’ actions when this matter was remanded contradict many of the timeliness arguments they make on appeal. Shortly after issuance of the Court’s

December 27, 2022 mandate, on January 26, 2023, 1305 LLC filed a Motion for Attorneys’ Fees and Costs (“1305 LLC’s Motion for Fees”). App’x. 0056–60. The next day—at a status hearing before Judge Ross—the Mussells raised the issue of whether the Superior Court had jurisdiction to entertain 1305 LLC’s motion for attorneys’ fees and costs because this Court had not yet issued a reasoned opinion. *See* Dkt., D.C. Sup. Ct., No. 2016-CA-8570-B (Jan. 27, 2023).³ The Superior Court subsequently entered a briefing schedule, and directed the Mussells to respond to 1305 LLC’s Motion for Fees. *See id.* (“The parties that are seeking attorney[s]’ fees have until 2/17/2023 to brief the issue on rightness of the instruction from the Court of Appeal[s] and their position on attorney[s]’ fees. Pla[i]ntiff[s] have until 3/10/2023 to respond. Reply brief by 3/20/2023. The parties agree to the schedule.”).

On March 10, 2023, the Mussells filed an opposition to 1305 LLC’s Motion for Fees. Supp. App’x 31–38. The opposition did not actually address 1305 LLC’s request for attorneys’ fees, other than to argue that TOPA does not permit assignees

³ Appellants did not include a copy of the transcript of this hearing, nor of any other hearings held concerning 1305 LLC’s request for attorneys’ fees, other than the last hearing that was held on August 7, 2023. It is, of course, Appellants’ burden to show that they are entitled to the relief sought. It is inappropriate for Appellants to cherry-pick portions of the record below in their effort to invalidate the Superior Court’s appropriate exercise of discretion.

of tenant rights to recover attorneys' fees and costs, and to reiterate the Mussells' arguments that the Superior Court did not yet have jurisdiction. *Id.*

At a March 24, 2023 status conference, the Superior Court found that, as assignees of the tenants' TOPA rights, 1305 LLC had obtained the legal right to recover fees and costs from the tenants, standing in their shoes under the statute. *See* Dkt., D.C. Sup. Ct., No. 2016-CA-8570-B (Mar. 24, 2023). The Court gave the Mussells another opportunity to file an opposition to 1305 LLC's Motion for Fees. *Id.* ("Plaintiff[s] have 10 days by 4/5/2023 for any opposition for attorney[s'] fees. Replies are due by 4/12/2023.")

On April 5, 2023, the Mussells filed an opposition to 1305 LLC's Motion for Fees. App'x. 0070–72.⁴ Once again, the Mussells elected not to challenge the reasonableness of the fees sought by 1305 LLC. Supp. App'x 49–56. Their opposition instead focused on whether or not TOPA permitted assignees to recover fees. Supp. App'x 51–54. 1305 LLC filed a reply in response to the Mussells' opposition on April 10, 2023. Supp. App'x 57–63.

⁴ Appellants' Appendix only includes three pages from their Opposition to 1305 LLC's Motion for Fees. For completeness, a true and accurate copy of the Opposition is attached to Appellee's Appendix. Supp. App'x 49–56.

The Mussells Move to Recall the Mandate

On March 31, 2023 the Mussells filed a Motion to Recall the Mandate. Supp. App’x 43–48. In a footnote in that motion, the Mussells raised several of the issues that are the subject of this appeal, arguing, *inter alia*, that 1305 LLC’s request for fees was not timely because the motion was not filed within fourteen days of the Superior Court’s March 19, 2019 judgment (which entered judgment *against* 1305 LLC, and which judgment was subsequently overturned by this Court)⁵ or within fourteen days of the mandate. Supp. App’x 44.

1305 LLC took no position as to this Motion, noting that the 1305 LLC’s right to attorneys’ fees was not one of the issues presented on appeal. This Court granted the Motion to Recall the Mandate on April 12, 2023. Supp. App’x 64.

On April 27, 2023, this Court issued a written opinion, which, *again*, reversed the decision of the lower court, “with instruction to”:

enter judgment for appellant, grant specific performance of appellant’s contract with the Trust to purchase the Property, and vacate the order awarding attorney’s fees and costs to be paid to the Trust by appellant. On remand, the trial court may also undertake such further proceedings consistent with this opinion as may in the trial court’s discretion be appropriate, including consideration of the Trust’s counterclaim for attorney’s fees and costs against the Mussells.

⁵ Appellants have thrown every argument against the wall, but this one is particularly frivolous. Under Appellants’ theory, to preserve its rights following an appeal, a losing party would need to seek fees with the lower court, notwithstanding the fact that judgment had been entered against it. This would result in an inordinate amount of baseless motions, and would bog down lower courts.

Mussells I, 292 A.3d at 220.

On May 8, 2023, this Court denied the Mussells' Petition for Division Rehearing or for Rehearing En Banc, Supp. App'x 66–80, and issued a mandate to the Superior Court. Supp. App'x 81.

Further Proceedings Before the Superior Court

On May 16, 2023, 1305 LLC filed a Supplement to its Motion for Attorneys' Fees and Costs (“Supplement to Motion for Fees”) in the Superior Court, which requested additional fees incurred in the further proceedings detailed above. Supp. App'x 83–90. On May 19, 2023, Judge Ross held a status conference. *See* Dkt., D.C. Sup. Ct., No. 2016-CA-8570-B (May 19, 2023). At the conclusion of that hearing, Judge Ross ordered 1305 LLC to submit a judgment order as to specific performance and 1305 LLC's right to purchase the property in issue. *Id.* Judge Ross also gave the Mussells a *third* opportunity to oppose 1305 LLC's request for attorneys' fees and costs. *Id.* (“Plaintiff filed an Opposition to [1305 LLC's] Motion for Attorney[s'] Fees. Plaintiff[s'] counsel opposes the Motion. Plaintiff[s] have until 6/3/2023 to file an Opposition. Defendant[s] have until 6/5/2023 to reply.”).⁶

⁶ Tellingly, in the proposed order of judgment, as well as the as-issued order, it was noted that the motions for attorneys' fees and costs were not ripe, and that they would be “decided at a later date” once briefing was completed. Thus, any suggestion that the Court “had already made [its] decision before any arguments, and had only briefly considered, if at all, the oppositions filed” is unfounded. App. Br. at 24.

On June 3, 2023, the Mussells timely filed an opposition to the Supplement to Motion for Fees. App’x 0073–78.

On July 11, 2023, the Superior Court entered a Judgment Order (“July 11 Judgment Order”) granting in part the Trustees’ Motion, declaring that the Trust possessed the right and obligation to convey the subject property to 1305 LLC, and ordering that “the motions for attorneys’ fees and costs filed by the Trust and by [1305 LLC] are not ripe for disposition, and will be decided at a later date once the parties’ submissions are completed in accordance with the briefing schedule” previously set. Supp. App’x 98–99. Thus, the July 11 Judgment Order rendered 1305 LLC a prevailing party because the Superior Court entered judgment in its favor and ordered the specific performance, which 1305 LLC sought.

On August 4, 2023, the lower court issued a *Sua Sponte* Order Setting Motions Hearing. Supp. App’x 100. The lower court held that hearing on August 7, 2023 (“August 7 Motion Hearing”) to resolve the motions for attorneys’ fees and costs filed by 1305 LLC and the Trustees. *See* App’x. 0080–89. Having received the briefing in advance of the August 7 Motion Hearing, the lower court noted its full consideration of the arguments pressed by the Mussells:

[THE COURT]: I know [Counsel for the Mussells] made arguments about the timeliness and things like that, and he said well it wasn’t in the counterclaim, but it’s part of the statute.

And any argument about timeliness was certainly rectified when we finally got an opinion from the Court of [A]ppeals and a new

mandate. And plus, I gave a briefing schedule, but I don't know. It seems pretty straightforward at this point.

App'x. 0081. The transcript of this hearing makes clear that the Superior Court gave Counsel for the Mussells a full opportunity to be heard:

[COUNSEL FOR THE MUSSELLS]: Well, the substance of my opposition is really that the LLC did not request attorney's fees, make reference to the TOPA statute in their counterclaim. I don't believe they preserved that issue on appeal. And I don't feel -- I don't believe that they made a timely request after the Court of [A]ppeals reversed the judgment.

So I feel that there are procedural defects in the request itself, not necessarily in the amount of the fees. And that's what I wanted to bring to the Court's attention.

[THE COURT]: I read the Court of [A]ppeals' opinion [as] telling me to specifically pick up the issue of attorney's fees.

App'x. 0083.⁷

⁷ The lower court and Counsel for Appellants engaged in a continued colloquy relating to this Court's mandate, which turned into a discussion of the Trustees' motion. *See* App'x. 0083–85. With regard to the Trustees' motion, the lower court and Counsel for Appellants' colloquy concluded:

[COUNSEL FOR THE MUSSELLS]: I would just say that I do oppose the [T]rustee's position in that their application for attorney's fees was untimely and that they are not considered a prevailing party under the case law that I cited in my opposition.

[THE COURT]: Well, I think they are, and I think it's timely. And even if it's not timely, . . . you have to show prejudice. And just having to pay it isn't prejudiced.

App'x. 0087.

One day later, on August 8, 2023, the lower court issued a “Judgment Order” resolving 1305 LLC’s Motion for Fees and Supplement (“August 8 Judgment Order”). The August 8 Judgment Order granted 1305 LLC’s Motion for Fees and Supplement, awarded 1305 LLC a monetary judgment in the amount of \$154,195.89 against the Mussells, and closed the case. App’x. 0090–91.⁸

The Mussells noted an appeal of the lower court’s August 8 Judgment Order on September 6, 2023.

STANDARD OF REVIEW

This Court reviews the lower court’s award of attorneys’ fees for abuse of discretion. *Khan v. Orbis Bus. Intel. Ltd.*, 292 A.3d 244, 253 (D.C. 2023). Under this standard, this Court “generally defers to the broad discretion of the trial judge in the calculation and award” of such fees and costs. *Id.* (citation omitted); *see also Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 988 (D.C. 2007) (“Our scope of review [of an award of attorney’s fees] is a limited one because disposition of such motions is firmly committed to the informed discretion of the trial court.”) (citation omitted and alteration in original). “[I]t requires a very strong showing of abuse of discretion to set aside the decision of the trial court [regarding the awarding of attorney’s fees].” *Khan*, 292 A.3d at 253 (citation omitted and alteration in original).

⁸ The lower court issued a separate Judgment Order on August 8, 2023 resolving the Trustees’ motion. *See* App’x 0092.

ARGUMENT

This Court should affirm the decision of the lower court for three reasons. *First*, the crux of this appeal can be resolved by a straightforward reading of Superior Court Rule 54(d). All that Rule requires is that a claim for attorneys’ fees and costs be filed “no later than 14 days after the *entry of judgment*.” D.C. Super. Ct. Civ. R. 54(d)(2)(B)(i) (emphasis added). 1305 LLC’s Motion for Fees is timely because 1305 LLC filed it in January 2023—months before the lower court entered the July 11 Judgment Order following the reversal and remand in *Mussells I*. Appellants’ suggestion that a claim for attorneys’ fees must be filed within 14 days of an Order from this Court reversing and remanding a case must be rejected as illogical, unsupported by the plain language of Rule 54(d), and contrary to the Advisory Committee Notes thereto. Moreover, read in the proper context, the caselaw Appellants offer for their misapplication of Rule 54(d) militates in support of 1305 LLC’s position: that the triggering event of the fourteen-day limitation begins with the *entry of judgment* in the lower court, not with an order or mandate of this Court.

Second, 1305 LLC—as assignee, standing in the shoes of tenants by way of an assignment of rights under TOPA—is entitled to an award of attorneys’ fees and costs pursuant to TOPA as if sought by the tenants themselves. D.C. Code § 42-3405.03 permits the “enforcement of any right” under TOPA, and, “upon prevailing, . . . an award of costs and reasonable attorney[s]’ fees.” TOPA also

unequivocally permits tenants to assign their rights. Permitting an award of attorneys' fees and an assignment of TOPA rights—comports with the legislature's intention of strengthening tenants' rights, which necessarily includes affording tenants the opportunity to contract with third parties to convey such rights in exchange for good and valuable consideration. As a prevailing party following reversal and remand in *Mussells I*, the lower court correctly awarded 1305 LLC attorneys' fees and costs.

Third, the lower court gave due consideration to all parties' arguments regarding the award of attorneys' fees and costs. Any intimation that the lower court did not consider Appellants' arguments below or that it “rubber-stamp[ed]” the request for attorneys' fees and costs is simply belied by the record. To the contrary, the lower court held numerous hearings and received and reviewed ample briefing and billing records (including *three* separate oppositions filed by the Mussells) before *sua sponte* setting the August 7 hearing, wherein it gave all parties—including the Mussells—a fulsome opportunity to be heard. This Court should not disturb the lower court's sound exercise of discretion in granting attorneys fees' and costs.

For each of these reasons, this Court should affirm.

A. 1305 LLC Timely Filed its Motion for Attorneys’ Fees and Costs When it did so Before “Entry of Judgment” in the Superior Court.

Appellants’ argument that 1305 LLC’s Motion for Fees is untimely because 1305 LLC did not file such a motion “within fourteen days of the *reversal* of the trial court’s judgment on December 2, 2022,” must fail. App. Br. at 9 (emphasis added). The fourteen-day limitation contained in the plain language of Rule 54(d)(2)(B)(i) is triggered by the “entry of judgment” in the lower court. Appellants suggest—without a single citation for support—that 1305 LLC had fourteen days from this Court’s December 2 Order reversing the judgment of the lower court to file its Motion for Fees. This cannot be. The requisite “entry of judgment” occurred when the lower court entered its July 11 Judgment Order, as directed by this Court’s earlier mandate.⁹ Because 1305 LLC filed its Motion for Fees and Supplement to Motion for Fees *before* the entry of judgment below, it is necessarily timely.

1. Motion for Attorneys’ Fees is Timely Under Rule 54(d) if it is Filed No Later than 14 Days After Entry of Judgment.

This Court’s analysis begins and ends with the language of Rule 54(d). Under the plain language of that Rule, 1305 LLC’s Motion for Fees is timely because it was filed *before* the lower court’s entry of judgment. Astonishingly, Appellants’

⁹ Under Appellants’ theory, 1305 LLC was required to seek fees by December 16, 2022, which is fourteen (14) days after the date of the December 2 Order. But, by that point, a mandate from this Court had not yet issued. This further illustrates the speciousness of their argument.

Brief fails to quote—even once—the language of Rule 54(d), which Appellants contend provides the basis for reversal. The plain language of Rule 54(d) flatly contradicts Appellants’ argument, stating that a claim for attorneys’ fees and costs must “be filed no later than 14 days after the *entry of judgment*.” D.C. Super. Ct. Civ. R. 54(d)(2)(B)(i) (emphasis added). This mirrors the language of Federal Rule of Civil Procedure 54(d)(2)(B)(i).

“In interpreting Superior Court rules,” this Court has long “appl[ie]d the broad goal ‘to facilitate a proper decision on the merits.’” *Jones v. Fondufe*, 908 A.2d 1161, 1162 (D.C. 2006) (citation omitted). This Court “may utilize the same methods of statutory construction in interpreting the procedural rule as [it] would use in interpreting the meaning of a statute”—that is, by “look[ing] to the plain meaning of the words, to the legislative history, and to the interpretations that have been placed on the rule by other courts.” *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 65 (D.C. 1980).

Where a Superior Court rule is “substantially similar” to its federal counterpart, this Court has found it useful to “look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule.” *Colvin v. Howard Univ.*, 257 A.3d 474, 485 n.11 (D.C. 2021) (citation and internal quotation marks omitted); *see also Carter v. Saxon*, 358 A.2d 639, 641 n.2 (D.C. 1976) (“Superior Court rules are to be interpreted and construed in light of the

Federal Rules where the corresponding provisions are literally or substantially identical.”) (citation omitted). Additionally, in interpreting rules of the Superior Court, this Court “frequently find[s] guidance in the advisory committee’s notes to the corresponding federal rule.” *C.R. Calderon Constr., Inc. v. Grunley Constr. Co.*, 257 A.3d 1046, 1059 (D.C. 2021) (internal quotation marks omitted).

The plain language of Rule 54(d) unambiguously provides that a claim for attorneys’ fees and costs must “be filed no later than 14 days after the *entry of judgment*.” D.C. Super. Ct. Civ. R. 54(d)(2)(B)(i). It follows, then, that any claim filed *before* the entry of judgment is necessarily timely because it occurs “no later than 14 days after” the triggering event: entry of judgment.

Beyond the plain language, this Court has relied on the advisory committee’s note to subdivision (d) of Federal Rule of Civil Procedure (“FRCP”) 54 before, which confirms this understanding. *See C.R. Calderon*, 257 A.3d at 1059 (relying on Advisory Committee Note to FRCP 54 in interpreting Superior Court Rule 54); *District of Columbia v. Jackson*, 878 A.2d 489, 492 (D.C. 2005) (“*Jackson*”) (observing that the Superior Court rule “is virtually identical to its federal counterpart, and the explanatory note accompanying the rule is entirely consistent with the more extensive federal advisory committee’s notes to the corresponding federal rule”).

Specifically, following the 1993 Amendments to FRCP 54, the advisory committee explained:

Subparagraph (B) provides a deadline for motions for attorneys’ fees—*14 days after final judgment* unless the court or a statute specifies some other time.

* * *

A new period for filing will *automatically begin if a new judgment is entered following a reversal or remand* by the appellate court. . . .

Advisory Committee Note to Fed. R. Civ. Proc. 54 (1993) (hereinafter “Advisory Committee Note”) (emphasis added). This language confirms that the entry of judgment, not the order or opinion directing reversal, is the triggering event for purposes of Rule 54. And, where the lower court enters a new judgment after an appeal that results in reversal or remand—as occurred here—a new fourteen-day period begins.

Given the plain language of Rule 54 and the clarity of the Rule’s application—evidenced by the Advisory Committee Note—it comes as no surprise that the cases Appellants cite in their brief, *see* App. Br. 10–11, actually militate in favor of 1305 LLC and confirm that the fourteen-day limitation in Rule 54(d) begins to run from entry of judgment, not an appellate court’s order of reversal or remand.

In *Zuniga v. Whiting-Turner Contracting Co.*, this Court recognized that the fourteen-day period to file a motion for attorneys’ fees began to run from the entry

of the Superior Court’s order that constituted “a ‘judgment’ within the meaning of Rule 54.” 270 A.3d 897, 905 (D.C. 2022). Indeed, to the very issue at the heart of this appeal, Appellants cannot escape *Zuniga*’s clear application of the Rule: “Rule 54(d)(2)(B) states the 14-day period starts to run when the judgment entitling the movant to attorneys’ fees is *entered*.” *Id.* (emphasis in original).

In *Jackson*, this Court faced a similar fact pattern insofar as the appellant in that case successfully obtained a reversal on appeal. This Court explained:

[B]oth the explanatory and the advisory committee notes provide for a new filing period in the event of a reversal or remand, but not an affirmance, as the reversal or remand could potentially change which party would be entitled to attorney’s fees. Thus, the “new period for filing” provides newly-prevailing parties the opportunity to request attorney’s fees

Jackson, 878 A.2d at 493–94 (emphasis omitted).

The plain language of Rule 54(d), the Advisory Committee Note thereto, and this Court’s caselaw uniformly lead to the conclusion that a motion for attorneys’ fees and costs is timely if filed within fourteen days of the lower court’s entry of judgment.

2. The Lower Court’s July 11 Judgment Order Constitutes the “Entry of Judgment” From Which the 14-Day Period Began to Run.

Rule 54(a) defines “judgment” to “include[] a decree and any order from which an appeal lies.” D.C. Super. Ct. R. 54(a). The lower court’s July 11 Judgment Order constitutes the “entry of judgment” that in turn started the clock on the time

for a prevailing party to file a claim for attorneys' fees. By July 11, however, 1305 LLC already filed its claim for attorneys' fees and costs. In fact, it did so in *January*, months *before* the deadline to do so had elapsed. Necessarily then, 1305 LLC's motion is timely filed.

Appellants' suggestion that this Court's December 2 Order is the triggering event that started the fourteen-day period under Rule 54(d) is illogical. First, this Court's December 2 Order does not meet the definition of a "judgment," under Rule 54, because it is not an "order *from which an appeal lies.*" D.C. Super. Ct. Civ. R. 54(a). Second, this Court's December 2 Order—and, to be sure, its December 22 Amended Order—did not enter a declaratory judgment or award specific performance. Instead, those orders directed *the lower court* to enter such relief and remanded the case *for further proceedings* to evaluate entitlement to fees and enter judgment accordingly. App'x 0053 ("[T]hese cases are remanded to the Superior Court for further proceedings consistent with this order . . ."); App'x 0055 ("[T]he case is *remanded to the Superior Court for further proceedings consistent with this order*, including consideration of pending counterclaims and *requests for attorney's* [sic] *fees and costs.*"). That these Orders contemplated an entry of judgment by the lower court shows that they cannot be the triggering event for purposes of Rule 54(d).

In accordance with this Court’s directive, the lower court proceeded on the issues set out in this Court’s December 22 Amended Order and subsequent opinion in *Mussells I*. It entered judgment on July 11, as directed by this Court, and, in connection with this Court’s Orders, conducted “further proceedings” relating to attorneys’ fees and costs. Specifically, it established a briefing schedule, received briefing on entitlement to attorneys’ fees and costs, and held multiple hearings, before entering a final judgment that complied with the requirements of Rule 54(a) on August 8, 2023.

Critically, “[a]n award of attorney’s fees is final when the trial court has ‘determined the quantum of attorney’s fees to be paid,’ not when the trial court ‘merely establishe[s] entitlement to attorney’s fees in an amount to be later determined.’” *Linen v. Lanford*, 945 A.2d 1173, 1182 (D.C. 2008) (quoting *Marlyn Condo., Inc. v. McDowell*, 576 A.2d 1346, 1347 n. 1 (D.C. 1990) (alterations in *Marlyn*)).

Here, the August 8 Judgment Order determined the actual amount of attorneys’ fees and costs to be paid, thus rendering it a final order. On that point, there can be no serious doubt because the August 8 Judgment Order is also the order from which the aggrieved party—the Mussells—noted an appeal on September 6, 2023. And, this series of events confirms the policy that animates Rule 54(d). *See* Advisory Committee Note (“One purpose of this provision is to assure that the

opposing party is informed of the claim before the time for appeal has elapsed.”). Rule 54 ensures that the prevailing party has an opportunity to request attorneys’ fees and costs following the entry of judgment and that an aggrieved party has sufficient time to note an appeal, should it choose to do so. As the Rules contemplate, that is precisely what occurred below.

This Court should affirm.

B. The Award of Attorneys’ Fees and Costs to 1305 LLC is Authorized by TOPA and Confirmed by the Statute’s Purpose and Nature

D.C. Code § 42-3405.03 provides that “[a]n aggrieved owner, tenant, or tenant organization may seek enforcement of any right or provision under this chapter through a civil action in law or equity, and, upon prevailing, may seek an award of costs and reasonable attorney fees.”¹⁰ As part of the assignment agreement that 1305 LLC entered into (the “Assignment”), the Tenants:

unconditionally and irrevocably assign[ed] their rights, benefits, interests, duties and obligations of TOPA Rights to Developer, and absolutely transfer[ed] and assign[ed] to Developer all rights of the Tenants under the TOPA Rights, authorizing and empowering Developer to exercise all rights and remedies available under TOPA,

¹⁰ Appellants suggest that 1305 LLC’s request for fees must be included in its counterclaim. This is not so and this Court may easily dispense with that argument. First, the cases upon which Appellants rely do not support this proposition. *See generally*, App. Br. at 11–12. Second, as described in more detail here, 1305 LLC’s entitlement to attorneys’ fees and costs is derived by statute and need not be set out in a counterclaim. And, even if it did, 1305 LLC preserved its right to seek attorneys’ fees and costs by including in its “Prayer for Relief” a request “for such other and further relief as this Court deems just and proper.” App’x 0050.

the TOPA Rights or by law without the necessity of further action on the part of Tenants.

Supp. App'x 2. Standing in the shoes of the tenants by way of the Assignment, 1305 LLC is entitled to exercise the tenants' statutory rights, including their right to an award of attorneys' fees and costs. *See, e.g., Malik Corp. v. Tenacity Grp., LLC*, 961 A.2d 1057, 1059 (D.C. 2008) (declining to set aside trial court's award of attorneys' fees to Tenacity Group, LLC, which was the assignee of rights from a tenant organization).

To be sure, the statute's purpose paragraphs and remedial nature bolster this conclusion. *See* D.C. Code § 42-3401.02(1) (noting that the statute is designed to “strengthen the bargaining position of the tenants”); *id.* at § 42-3405.11 (directing that ambiguity be resolved “toward the end of strengthening the legal rights of tenants . . . to the maximum extent permissible under the law”). Part and parcel with strengthening tenants' rights, as here, is enabling tenants to freely contract away their rights for valuable consideration. To conclude that an assignee of tenants' rights could not recover attorneys' fees and costs would run counter to the purpose of the statute and detract from tenants' bargaining position because such a result would dissuade tenants from assigning their rights. Moreover, such a conclusion would disincentivize assignees from assuming tenants' rights—particularly because it would subject assignees to litigation risks and costs that tenants would not face—

and cause a chilling effect that would severely undercut tenants seeking to facilitate an assignment of rights.

The lower court correctly concluded that 1305 LLC is entitled to an award of attorneys' fees and costs. This Court should affirm.

C, The Lower Court, in its Sound Discretion, Awarded Attorneys' Fees and Costs After Giving Appellants' Arguments Due Consideration.

This case lacks any showing of abuse of discretion, let alone the requisite “very strong showing” that could justify reversal of the lower court’s award of attorneys’ fees and costs. *Khan*, 292 A.3d at 253. To the contrary, the record clearly shows that Appellants were given *multiple* opportunities to oppose 1305 LLC’s request for fees, and that *multiple* hearings on these issues were held.

Appellants complain that the lower court “gave no real consideration” to their arguments below and that the lower court offered “no findings of fact or detailed reasons” for its decision to award attorneys’ fees. App. Br. at 24. These arguments are unavailing and contrary to the record, which belies any notion that the lower court did not give due consideration to Appellants’ arguments. Moreover, where Appellants did not challenge the reasonableness of the attorneys’ fees and costs—and, instead premised their challenge on timeliness grounds and the availability of fees under TOPA—the lower court need not engage in extensive reasoning and analysis before granting the motion.

In pressing this argument, Appellants' brief neglects to mention the substantial motions practice that occurred before the lower court *sua sponte* set and held the August 7 Motions Hearing. As described above, 1305 LLC filed its Motion for Fees, supported by billing records and other documentary evidence, which the Mussells opposed. App'x 56–62; Supp. App'x 49–56. 1305 LLC and the Mussells extensively briefed the issue of jurisdiction. Supp. App'x 19–23; 29–30; 31–38. When the lower court indicated that it thought that 1305 LLC was, in fact, entitled to seek attorneys' fees as an assignee, the lower court gave the Mussells another bite at the apple, and permitted them to file another opposition brief. Supp. App'x 49-56. Following issuance of this Court's April 27, 2023 written opinion and subsequent mandate, 1305 LLC filed a Supplement to Motion for Fees, detailing additional amounts also supported by billing records and documentary evidence. Supp. App'x 83–90. The lower court entered a briefing schedule, and the Mussells were permitted to file a third opposition brief. Supp. App'x 91–94. Because of these filings, the lower court was well-informed on the substance of the issues before the August 7 Motion Hearing.

Informed by the briefing, lower court expressly articulated the basis for Appellants' arguments at the outset of the August 7 Motion Hearing. *See* App'x. 0081. The lower court heard from all parties before orally rendering its decision and requesting proposed orders from 1305 LLC and the Trustees. App'x. 0087. Indeed,

before concluding the hearing, the lower court indicated to Counsel for Appellants, “I understand your position.” App’x. 0086. While the lower court gave due regard to Appellants’ arguments, it was not compelled to agree with them.

A trial court is “not required to perform an in-depth analysis of the billing records,” especially where there is no challenge to the reasonableness of the attorneys’ fees. *Lively*, 930 A.2d at 993. Appellants do not dispute the reasonableness of attorneys’ fees and costs here. *See* App’x. 0082 (“I wasn’t necessarily opposing the amount of the fees.”); App’x. 0083 (“I feel that there are procedural defects in the request itself, not necessarily in the amount of the fees.”). Because reasonableness is presumed, the lower court need not explain in painstaking detail how it reached its award of fees. Instead, the lower court could, and did, resolve the issues actually before it without a lengthy analysis. This, however, does not mean the lower court rendered an unprincipled decision in abuse of its discretion. The lower court simply determined that 1305 LLC filed a timely and meritorious Motion for Fees and Supplement thereto. That decision, which is “firmly committed to the informed discretion of the trial court” ought not be disturbed. *Lively*, 930 A.2d at 988.

As a final matter, this portion of Appellants’ argument hinges on three remarks made by the lower court over the duration of the August 7 Motion Hearing. *See* App. Br. at 23. Appellants’ cherry-picked quotations from the August 7 Motion

Hearing fall well-short of demonstrating an abuse of discretion.¹¹ The lower court twice referenced a further appeal to this Court. The context of the lower court’s remarks at the conclusion of the August 7 Motions Hearing make clear it had not prejudged the outcome of the motions, but that an appeal to this Court would be Appellants’ only further recourse given this Court’s earlier mandate and orders, and posture of the case at that time:

[THE COURT]: [Y]ou didn’t object to the amount really. It was just the notion. I understand your position, but I think you have to take it up again with the Court of [A]ppeals.

* * *

[THE COURT]: If [Counsel for 1305 LLC] and [Counsel for Trustee] could please submit proposed orders, . . . we’ll enter those orders, close the case, and you can take it back up to the Court of [A]ppeals. But I feel like that’s the posture of the case and that’s what my part of my mandate is.

App’x. 0086–87. Placed in the proper context, it becomes clear that the lower court heard and considered the arguments presented to it before reaching its ultimate conclusion to make an award of attorneys’ fees and costs.

This Court should affirm.

¹¹ Appellants read the lower court’s desire to “proceed down the line” to mean “this appeal.” App’x. 0082; App. Br. 24. Read in context, however, it appears that, at the beginning of the hearing, the lower court said these words referring to the order in which it would hear argument from the parties: “So. Okay. Well, [Counsel for Appellants], and then we’ll just proceed down the line.” App’x. 0082.

CONCLUSION

For the foregoing reasons, this Court should affirm the Superior Court's award of attorneys' fees and costs in favor of 1305 LLC in all respects and remand this case to the Superior Court for consideration of a supplemental petition for attorneys' fees and costs incurred in conjunction with the instant appellate proceedings.

Date: March 1, 2024

Respectfully submitted,

/s/ Robert C. Gill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2024, the foregoing **BRIEF OF APPELLEE** was served on all counsel of record via the court's e-filing platform, which will cause a copy to be served on all counsel of record.

/s/ Robert C. Gill
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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/ Robert C. Gill

Signature

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No. 23-CV-747

Case Number(s)

3/1/2024

Date