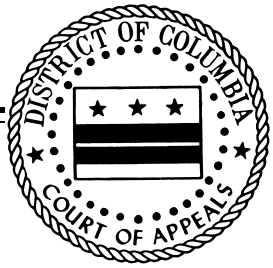
No. 23-CV-0189



In the

District of Columbia Court of Appeals

LOLILLIAN J. SMITH,

Appellant,

v.

WILMINGTON SAVINGS FUND SOCIETY, FSB D/B/A Christina Trust, Not in its Individual Capacity but Solely as Owner Trustee of Residential Credit Opportunities Trust II, *et al.*,

Appellees.

On Appeal from the Superior Court of the District of Columbia Civil Division

BRIEF OF APPELLEE WILMINGTON SAVINGS FUND SOCIETY, FSB D/B/A CHRISTINA TRUST

RICHARD A. LASH (D.C. BAR NO. 408382)
BUONASSISSI, HENNING & LASH, P.C.
12355 Sunrise Valley Drive, Suite 650
Reston, Virginia 20191
(703) 217-5602
richard.lash@bhlpc.com
Counsel for Appellee

CP COUNSEL PRESS (800) 4-APPEAL • (325336)

RULE 28(a)(2)(A) STATEMENT

The parties to the case are Appellant LoLillian Smith, and Appellees Wilmington Savings Fund Society, FSB D/B/A Christina Trust, Not In Its Individual Capacity But Solely As Owner Trustee Of Residential Credit Opportunities Trust II; Nationstar Mortgage, LLC D/B/A Mr. Cooper; Gregory Allan Jefferson; Gerard Fryar; and SJ&F Builders, LLC. Appellee Nationstar is the successor-in-interest to previous parties Rushmore Loan Management Services LLC and Capital One, N.A.

In Superior Court, Rachael Flanagan and Scott Lempert of Cohen Milstein were pro bono counsel for Ms. Smith; Richard Lash, of Buonassissi, Henning & Lash, PC, was counsel for Wilmington; Aaron Neal of McNamee Hosea represented Rushmore; Edward Cohn, Matthew Fischer, and Kevin Hildebeidel of Cohn, Goldberg, and Deutsch, LLC represented Capital One, along with Stephen Hessler of Offit Kurman. Jefferson, Fryar, and SJ&F were not represented. No amici appeared.

In this Court, Thomas Landers, Daniel Martin, and Meghan Greenfield represent Ms. Smith as pro bono counsel, in affiliation with the Legal Aid Society of the District of Columbia. Richard Lash continues to represent Wilmington. Peter Duhig represents Nationstar. Jefferson, Fryar, and SJ&F are not represented. No intervenors or amici have appeared in this Court at the time of this filing.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

* Authorities chiefly relied upon are marked with an asterisk.

Statutes & Other Authorities:

Appellee, Wilmington Savings Fund Society, FSB, d/b/a Christina Trust, not in its individual capacity but solely as Owner Trustee of Residential Credit Opportunities Trust II (the "Intervener"), by its attorneys, Richard A. Lash and Buonassissi, Henning & Lash, P.C., files this its Brief of Appellee in opposition to the appeal filed herein by the Appellant, LoLillian Smith ("Smith"), and respectfully states as follows:

STATEMENT OF JURISDICTION

This Court has jurisdiction to hear this appeal pursuant to D.C. Code § 11-721(a)(1).

STATEMENT OF THE ISSUES

This appeal concerns the following issues:

1) Was the Quitclaim Deed by way of which Smith conveyed the subject property to SJ&F Builders, LLC ("SJ&F") procured by fraud in the factum?
2) Was Appellee a *bona fide* purchaser for value without notice of Smith's claims regarding the subject property?

In her Statement of the Issues, Smith claims that the Trial Court did not rule on Smith's arguments that the Quitclaim Deed was void and that a lender's notice should be measured by when its deed of trust is recorded as opposed to when its loan is made and when its loan proceeds are disbursed. It is submitted that the Trial Court

did in fact correctly rule that the Quitclaim Deed was not void and was merely voidable at the hearing on Intervenor's Motion to Reconsider as Smith presented no evidence that the deed was procured by fraud in the factum in her opposition to Intervenor's Motion for Summary Judgment in addition to what was before the Trial Court when the Motion to Reconsider was granted. And as more fully set forth in Part III of the Argument section of this Brief, Smith's argument as to the date of recording for notice and *bona fide* purchaser purposes ignores basic principles of statutory interpretation.

STATEMENT OF THE CASE

This is an appeal from the Order of the Superior Court of the District of Columbia granting Intervenor's Post Discovery Closed Motion for Summary Judgment in a case where Smith contended that the Quitclaim Deed by way of which she transferred her home to SJ&F was void *ab initio* because it was allegedly procured by fraud in the factum. In the alternative, Smith contended that Intervenor was not a *bona fide* purchaser for value without Notice of Smith's claims when Intervenor made its secured loan to SJ&F. The Motion for Summary Judgment was filed after the Superior Court had reconsidered its earlier Order declaring the deed to be void *ab initio*.

STATEMENT OF FACTS

Smith's Statement of Facts is replete with references to irrelevant communications in the log maintained by the settlement agent which closed the loan made by Intervenor's predecessor to SJ&F and is misleading and incomplete. Intervenor therefore provides the following Counterstatement of Facts.

I. Rushmore's Foreclosure Action Against Smith, Smith's Conveyance of the Property to SJ&F and Intervenor's Loan to SJ&F. (November 1, 2017 – October 10, 2018)

Plaintiff Rushmore Loan Management Services, LLC ("Rushmore") seeks to foreclose on real property formerly owned by Smith, located at 1104 Varney St. SE, Washington, DC 20032 (the "Property"). App. 210 at ¶4, App. 217 at ¶50. On February 12, 2018, Smith conveyed the Property to SJ&F, subject to two (2) loans obtained by Smith on the Property: a first mortgage from Rushmore in the original principal amount of $46,131.00 secured by a deed of trust on the Property ("Rushmore's DOT"), and a second mortgage from the District of Columbia Housing Authority ("DCHA") in the original principal amount of $61,148.00 secured by a deed of trust on the Property and other liens and judgments in favor of Smith's creditors. *See* App. 210 at ¶6).

On October 8, 2018, SJ&F conveyed the Property to the Intervenor's predecessor in trust to secure repayment of a new loan to SJ&F in the original principal sum of $231,000.00 ("Intervenor's Loan"). App. 212 at ¶19. Intervenor's

Loan was secured by what was intended to be a first priority lien on the Property ("Intervenor's DOT"). App. 330. ServiceLink (the "Settlement Agent"), the settlement agent which closed that loan requested and obtained payoff statements from Rushmore, DCHA, and others, and was informed in writing via the August 30, 2018 document entitled "Payoff Statement" ("Rushmore Payoff Statement") that on Rushmore was owed $55,612.35 and DCHA was owed $20,413.90, respectively. App. 212 at ¶21. At closing, the Settlement Agent paid $55,770.62 to Rushmore, $20,413.00 to DCHA, a total of $10,339.40 to four (4) other creditors of Smith, and paid $114,705.38, the balance of the $231,000.00 loan proceeds after settlement fees, costs, escrow, taxes, etc., directly to SJ&F. App. 221:104-105, 222:302-1307. The cash-out to SJ&F of $114,705.38 was irrevocably wired by the Settlement Agent to SJ&F on October 10, 2018. App. 213 at ¶26.

II. The Recording of Intervenor's Deed of Trust and Smith's Third-Party Complaint. (December 13, 2018 – October 2, 2019)

On December 13, 2018, the Settlement Agent recorded the Intervenor's DOT. App. 216 at ¶46.

Smith filed her Third-Party Complaint against SJ&F and its principals on October 2, 2019. Despite Intervenors lien having been recorded in the Land Records on December 13, 2018, Smith did not make Intervenor a party to the Third-Party Complaint. App. 217 at ¶52.

III. The Hearing on Smith's Motion to Void the Quitclaim Deed and the Trial Court's Order voiding it. (February 27, 2020 – June 15, 2020)

On February 27, 2020, the Trial Court held a hearing on Smith's Motion for a default Judgment against Jefferson, Fryer and SJ&F, at the conclusion of which the Trial Court ruled that the Quitclaim Deed was void *ab initio*. App. 115:-34. On June 15, 2020, the Trial Court entered its Order declaring that the February 12, 2018 Quitclaim Deed from Smith to SJ&F was void *ab initio*, in accordance with this Court's February 27, 2020 oral ruling to that effect at the close of a hearing of which Intervenor received no notice. App. 217 at ¶53.

IV. Intervenor's Motion to Reconsider the June 15, 2020 Order. (June 29, 2020 – February 22, 2021)

Intervenor, therefore, intervened in this case (1) to file its Motion to Reconsider the June 15, 2020 Order declaring that the February 12, 2018 Quitclaim Deed from Smith to SJ&F is void *ab initio*; and (2) to seek a declaration that Smith's conveyance to SJ&F, although allegedly a product of fraud, is voidable and not void *ab initio*, and therefore Intervenor's DOT is a valid first priority lien based on that lender's status as a *bona fide* purchaser for value, who took its security interest in the Property free and clear of any of right Smith may have once had to rescind her conveyance of the Property to SJ&F.

Smith, in her combined Opposition to Intervenor's Motion to Reconsider and Motion to Dismiss ("Oppo. Mot. Rec."), conceded that Intervenor had no notice of

the alleged fraud prior to the execution of Intervenor's DOT and the disbursement of the proceeds of its loan to SJ&F and others. *See*, Oppo. Mot. Rec. at p. 2 (stating "Intervenor's own contemporaneous notes and emails related to Third-Party Defendant's [SJ&F] loan, ostensibly produced in support of its motion for summary judgment, demonstrate that it knew of Ms. Smith's allegations as early as October 17, 2018 – just days **after** issuing the loan.") (emphasis added). App. 363; 217 at ¶55.

Likewise, Smith's Oppo. Mot. Rec. and the transcript of the February 27, 2020 Ex Parte Proof hearing ("Transcript 2/27/20") clearly demonstrate that Smith understood that her admitted execution of the Quitclaim Deed would transfer the property to SJ&F. App. 83:8-12; 105:16-24; 218 at ¶56.

On February 22, 2021, the Hon. Hiram Puig-Lugo, Associate Judge of the Superior Court of the District of Columbia granted Intervenor's Motion to Reconsider the June 15, 2020 Order declaring that the Quitclaim Deed executed on February 12, 2018 between Smith and SJ&F was void *ab initio*. App. 160:4-10. At that hearing, Judge Puigo-Lugo also granted Smith's Motion to Continue the hearing on Intervenor's Motion to Dismiss Smith's Third-Party Complaint or for Summary Judgment and denied that Motion on the basis that the parties had not completed discovery. App. 160:11-21; 218 at ¶57.

V. Discovery by the Parties to the Case. (June 2, 2021 to January 15, 2022)

Intervener propounded discovery to Smith inquiring as to the factual basis for the allegations in the Third-Party Complaint that the Quitclaim Deed was procured by fraud in the factum and that Intervenor had notice of Smith's claim to the Property before the proceeds of Intervenor's loan were disbursed. Smith objected to virtually all of Intervenor's Interrogatories and Requests for Production of Documents on the alleged basis that discovery was not complete, and that Smith should not have to answer until it was, but in partial response Smith referred Intervenor to the Transcript of the February 27, 2020 hearing. *See*, *e.g.* App. 386-425 (*see* second paragraph of each response to each interrogatory). In addition, in response to Intervenor's Request for Production of Documents, Smith produced a letter dated April 26, 2001 from Peoples Involvement Corporation to Homefree-USA which was Bates Stamped "Smith00236" affirming that Smith had successfully completed a job readiness program in August 1999 during which Smith demonstrated tremendous initiative and completed workshops in interview techniques, financial literacy, and budgeting skills.

Intervenor responded to Smith's discovery requests but had possession of no documents other than the ones voluntarily provided to Smith along with the Motion to Reconsider.

Pursuant to the Trial Court's August 30, 2021 Scheduling Order herein, the Close of Discovery was January 15, 2022; thus, discovery in this case had closed when Intervenor filed its Post Discovery-Closed Motion for Summary Judgment.

That following the close of discovery, Intervenor demanded that Smith respond to the discovery before the deadline for filing dispositive motions deadline of February 10, 2022 passed, but Smith produced no additional information.

Nothing exchanged in discovery by any party to this case provided any evidence that the Quitclaim Deed was procured by fraud in the factum or that Intervenor had notice of Smith's claim to the Property before the proceeds of Intervenor's loan were disbursed on October 10, 2018. App. 220 at ¶62.

VI. Intervenor's Post Discovery Closed Motion for Summary Judgment. (February 10, 2022 – September 29, 2022)

On February 2, 2022, Intervenor filed its Post Discovery Closed Motion for Summary Judgment ("PDC MFSJ") supported by a Statement of Undisputed Facts ("SUF") and a Memorandum in which Intervenor contended that the February 12, 2018 Quitclaim Deed from Smith to SJ&F ("Quitclaim Deed") was at most merely voidable and not void *ab initio* because the Quitclaim Deed itself was not a forgery and was not the result of "fraud in the factum." App. 209-220. In addition, Intervenor contended that it was a *bona fide* purchaser for value without notice because Intervenor obtained a valid interest in the Property for value and had no notice of the alleged fraud by SJ&F on Smith at the time of the closing of the loan

secured by (Intervenor's DOT).

Smith filed an Opposition to Intervenor's PDC MFSJ and a counterstatement of facts to which Intervenor filed a reply. The Trial Court held a hearing on the PDC MFSJ on September 29, 2022 and after (1) ruling that there was consideration for Smith's transfer of the Property to SJ&F (App. 501:24-502:5), and (2) that some of the items Smith's expert listed as red flags were not made available to Intervenor until after the loan closed (App. 504:20-23), granted Intervenor's PDC MFSJ. App. 492:10; 493:1; 504:3; 505:8. On February 7, 2023 the Trial Court entered a written Order granting Intervenor's Motion. App. 510

SUMMARY OF ARGUMENT

The Superior Court of the District of Columbia (the Trial Court") correctly held that Intervenor was entitled to summary judgment in this case because: (1) the February 12, 2018 Quitclaim Deed from Smith to SJ&F ("Quitclaim Deed") was neither a forgery nor was it obtained via "fraud in the factum" and was therefore at most merely voidable and not void *ab initio;* and (2) Intervenor was a *bona fide* purchaser for value without notice because Intervenor obtained a valid security interest in the Property for value and had no notice of the alleged fraud on Smith at the time of the issuance of its October 8, 2018 deed of trust (Intervenor's DOT) and

mortgage loan on the Property and before the proceeds of its loan were wired to Smith's lien creditors and SJ&F on October 10, 2018.

Smith, in her Opposition to Intervenor's Motion to Reconsider and Motion to Dismiss, conceded that Intervenor had no notice of the alleged fraud prior to the execution of Intervenor's DOT by SJ&F stating that:

> Intervenor's own contemporaneous notes and emails related to Third-Party Defendant's loan, ostensibly produced in support of its motion for summary judgment, demonstrate that it knew of Ms. Smith's allegations as early as October 17, 2018 – just days **after** issuing the loan. (emphasis added).

App. at 363

Likewise, the Transcript of the February 27, 2020 Ex Parte Proof hearing clearly demonstrate that Smith understood that her admitted execution of the Quitclaim Deed would transfer the property to SJ&F. App. at 34, 68:15-25, and 72:8-9. This demonstrates that Intervenor was entitled to a summary judgment dismissing Smith's claim to quiet title and for a judgment voiding the Quitclaim Deed.

Smith asserts two arguments in support of her claims that the Quitclaim Deed is void *ab initio* and Intervenor is not a *bona fide* purchaser which took its security interest in the Property free of Smith's latent interest: (1) the Quitclaim Deed was "obtained via fraud in the factum" even though it was not a forgery and Smith understood its contents and effect; and (2) that Intervenor is not a *bona fide* purchaser

because Intervenor was on inquiry notice of the alleged foreclosure rescue scam after the closing of Intervenor's DOT and loan and disbursement of its loan proceeds. In her Brief of Appellant, Smith misconstrues the concept of fraud in the factum, which is clearly not applicable because Smith knew she was signing a deed of her property to SJ&F. Smith also fails to point to any evidence that shows Intervenor had inquiry notice of the alleged fraud prior to the closing of Intervenor's DOT, and before the proceeds of the loan were disbursed to SJ&F and, likewise, fails to counter Intervenor's proof that it is a *bona fide* purchaser. Discovery was closed when Intervenor's Post Discovery Closed Motion for Summary Judgment was filed, and there was still no evidence before the Trial Court that Intervenor was on notice of Smith's claim until after its loan proceeds were disbursed. As a result, Intervenor's Motion for Summary Judgment was properly granted.

STANDARD OF REVIEW

This Court reviews summary judgment rulings de novo, "conducting an independent review of the record in considering whether the motion was properly granted." District Of Columbia v. Design Ctr. Owner D.C. LLC, 286 A.3d 1010 (D.C. 2022). In so reviewing, this Court applies the same standard as the Superior Court and affirms the grant of summary judgment if, accepting the allegations of the complaint as true, and construing all of the facts and inferences in favor of the nonmoving party, the record shows that there is no genuine issue of material fact,

and the movant is entitled to judgment as a matter of law. Urban Masonry Corp. v. N&N Contractors, 676 A.2d 26, 30 (D.C. 1996).

In cases involving the application of Sup. Ct. R. 56, when there is no genuine dispute as to the facts which are relevant and material to the controversy at hand, the Court may apply the appropriate law and make a dispositive ruling. Osbourne v. Capital City Mortgage Corp., 667 A.2d 1321 (D.C. 1995); Soyan v. Riggs Nat'l Bank, 544 A.2d 267 (D.C. 1988). Rule 56(a) provides that "[a] party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Super. Ct. R. Civ. P. 56(a).

Once a party moving for summary judgment meets the initial burden of demonstrating the lack of a dispute as to any material fact, the burden of defeating the motion shifts to the nonmoving party to demonstrate the existence of a genuine dispute of fact. Landow v. Georgetown-Inland Corp., 454 A.2d 310 (D.C. 1982); Ferguson v. District of Columbia, 629 A.2d 15 (D.C. 1993). To meet this burden, the factual dispute must be identified with specificity and general conclusory allegations are not sufficient to defeat the motion. Musa v. Continental Insurance Co., 644 A.2d 999 (D.C. 1993); Spellman v. American Security Bank, 504 A.2d 1119 (D.C. 1986). Moreover, the party resisting the motion for summary judgment must identify more than a scintilla of evidence to establish a dispute of fact. Brown

v. Consolidated Rail Corp., 717 A.2d 309 (D.C. 1998). The mere metaphysical possibility that a dispute of fact may materialize is also insufficient to defeat the motion. Bolle v. Hume, 619 A.2d 1192 (D.C. 1993), citing Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 106 S. Ct. 2505 (1986).

ARGUMENT

I. There Is No Forgery or Fraud in the Factum with Regard to the Quitclaim Deed

A. No evidence was produced in discovery after the motion to reconsider was granted which indicated that the Quitclaim deed was procured via Fraud in the Factum.

Smith assigns error to the Trial Court's statement in its September 29, 2022 oral ruling granting Intervenor's Post Discovery Closed Motion for Summary Judgment that it had already ruled that the Quitclaim Deed was not void but was merely voidable. App. 468. Smith bases this argument on the dicta in the Trial Court's statement in its February 22, 2021 oral ruling granting Intervenor's Motion to Reconsider the June 15, 2020 Order declaring the Quitclaim Deed to be void *ab initio* that it was allowing the parties to conduct discovery on whether the Quitclaim Deed was procured by fraud in the factum. App. 172. However, Smith's argument regarding discovery on the fraud in the factum issue ignores the fact that that discovery resulted in no evidence that the Quitclaim Deed was the result of fraud in

the factum that was not already before the Trial Court at the hearing on the Motion to Reconsider February 22, 2021. App. 364. In addition, because Smith neither discovered nor produced any evidence that Smith was not financially literate in opposition to Intervenor's Post Discovery Closed Motion for Summary Judgment, it is submitted that the Trial Court correctly ruled that the Quitclaim Deed was not the result of fraud in the factum.

B. The Quitclaim Deed was not void *ab initio*: Chen v. Bell-Smith

In her Opposition to Intervenor's Motion for Summary Judgment, Smith relied on Chen v. Bell-Smith, 768 F. Supp.2d 121, 135 (D.D.C 2011) for the definition of fraud in the factum which is defined as "the sort of fraud that procures a party's signature to an instrument without knowledge of its true contents." Opposition at p. 6. However, the holding in Chen does not help Smith because the court ultimately held that fraud in the factum was not applicable to the matter at hand, and, instead found that "successful invocations of the fraud in the factum defense are rare, and 'only in the most extreme situations have courts of any jurisdiction found a fraud in the factum defense to be viable." Chen, *supra*, 768 F. Supp.2d at 135. And the Chen court determined that fraud in the factum was not applicable in that case as well. *Id.* at 138. A careful analysis of Chen demonstrates exactly what fraud in the factum is, and why it is not applicable in the matter at hand either.

The Chen court noted that forged deeds are void *ab initio*, but that the plaintiffs in that case had conceded that their signatures were not void. *Id.* at 135. A non-forged deed may still be considered void *ab initio* if it was obtained via "fraud in the factum," which is defined as "the sort of fraud that procures a party's signature to an instrument without knowledge of its true nature or contents." *Id.* Further explained, fraud in the factum arises "from the want of identity or disparity between the instrument executed and the one intended to be executed." *Id.* (citations omitted). After reviewing several cases of fraud in the factum involving extreme factors of age, intelligence, literacy, education, and ability to understand English, the Court ultimately found that fraud in the factum was not applicable to the Chen plaintiffs due to their background and the fact that they did not read the deed they signed but relied on the representations of defendants at to the deed's contents. *Id.* at 135-136. The Chen court held:

> At most, then, plaintiffs have stated a claim of fraud in the inducement, which would only render the deed of sale voidable, not void. Because a voidable deed "is unassailable in the hands of a *bona fide* purchaser" [citations omitted], the question becomes whether HSBC was a *bona fide* purchaser, who "acquired an interest in a property for a valuable consideration and without notice of any outstanding claims which are held against the property by third parties."

Id. at 136.

Similarly, during the February 27, 2020 Ex Parte Proof hearing, Smith admitted that she signed the Quitclaim Deed, and that she was able to read,

understand and was aware that it transferred the property from her to SJ&F. App. 68:14-69:25. The entire Transcript of the February 27, 2020 Ex Parte Proof hearing, beyond the carefully selected portions attached to Smith's Opposition to Intervenor's Motion for Summary Judgement, makes it clear that, like in Chen, Smith at most has stated a claim for fraud in the inducement, which would only render the Quitclaim Deed voidable, and not void *ab initio*, and that if Intervenor is a *bona fide* purchaser, then its interest in the Property is valid and unassailable. Therefore, since Intervenor has demonstrated it is a *bona fide* purchaser, the Trial Court did not err in granting Intervenor's Motion for Summary Judgment.

C. EMC Mortg. Corp. v. Patton and Scotch Bonnett Realty Corp. v. Matthews

In addition to Chen, there are other cases where a lender got caught up in an mortgage foreclosure fraud rescue scam, where the alleged borrower (in this case SJ&F) is claimed to have received title fraudulently, subsequently obtained a mortgage with a lender (in this case Intervenor), then received substantial cash proceeds of the mortgage (in this case, more than $86,000.00), and caused lienholders on the Property to receive payoffs from the lender (in this case $15,166.00) to release those liens.

EMC Mortg. Corp. v. Patton, 64 A.3d 182 (D.C. 2012) provides guidance in this matter. As discussed in EMC, the trial court in that case initially granted relief in favor of the plaintiffs and voided *ab initio* EMC's mortgage loan and deed of trust

on the property, after plaintiffs alleged that defendant Jenkins and her company fraudulently convinced them to convey the property to the company, that would then obtain a $700.000.00 mortgage on the property and use the proceeds to extinguish plaintiffs' debts, and then sell the property back to plaintiffs in one-year. EMC, *supra* at 183-184. After reversal and remand by the Court of Appeals, the D.C. Superior Court granted the lender's motion to dismiss the amended complaint (on the causes of action against the lender) and denied the borrower's motion for leave to file a second amended complaint (modifying the causes of action against the lender). *See*, Patton, et al. v. Jenkins, et al., 2010 CA 002244 R(RP) (*See*, App. 217 at ¶54.)

Furthermore, the highest court of the State of Maryland[1], has held that a deed, such as the one in this case, that is not alleged to be a forged document and is not alleged to have been signed with a forged signature, is, therefore, not void *ab initio*. *See* Scotch Bonnett Realty Corp. v. Matthews, 417 Md. 570, 11 A.3d 801 (2011).

The Scotch Bonnett court held that "A property owner's title should not be at risk that a grantor in the chain of title decides that the act of granting has been induced by a written misrepresentation, even if the misrepresentation includes a

[1] See, Seidenberg v. Seidenberg,126 F. Supp. 19 (D.D.C. 1954) ("It must be borne in mind that the decisions of Maryland courts on questions of common law and equity jurisprudence, necessarily carry great weight in this jurisdiction, because the District of Columbia derives its common law and equity through Maryland").

forged signature." Id. Hence, if the signature on a conveyance of real property is a forgery or is executed under the authority of a fraudulent power-of-attorney, then the conveyance is void *ab initio*, but if the signature on a conveyance of real property is obtained through fraudulent inducement, then the conveyance is voidable, but not to a *bona fide* purchaser.

The applicability of Scotch Bonnett to the facts of the instant case make it clear that the conveyance of the Property from Smith to SJ&F is at most voidable, not void *ab initio*, and the Intervenor's DOT is not voidable at all if Intervenor is a BPF. Like Maryland, the District of Columbia draws a distinction between the effect of a forged deed (void *ab initio*) and a deed obtained by false pretenses (not voidable as to a *bona fide* purchaser). Compare M.M. & G., Inc. v. Jackson, 612 A.2d 186 (D.C. App. 1992) (forged deed could not validly transfer property and that even a *bona fide* purchaser takes nothing from its conveyance) and Chen v. Bell-Smith, 768 F.Supp.2d 121, 134 (D.D.C. 2011) (applying D.C. law) (*bona fide* purchaser is protected from outstanding interests in property of which it had no notice, and hence may obtain valid interest in real property from someone who obtained that property by fraud).

As was the case in Scotch Bonnett, there is no contention that Smith's signature on the deed to SJ&F, nor SJ&F's signature on Intervenor's loan documents or the Intervenor's DOT was forged, but only allegations that the Third Party

Defendants Fryar and Jefferson fraudulently induced Smith to convey the Property to SJ&F; and this is analogous to the forged articles of amendment in Scotch Bonnett, Smith concedes in the Third Party Complaint that the fraud was allegedly in Frye and Jefferson's "signing alternative SJ&F, LLC incorporation papers that only listed Jefferson and Fryer as members," and not in the executing of Intervenor's loan and Intervenor's DOT. *See*, Third Party Complaint at ¶¶25-27. Moreover, the Third-Party Complaint concedes that Smith freely executed her signature on the February 12, 2018 quitclaim deed conveying the property to SJ&F, and that this quitclaim deed was properly recorded the same day. *See*, Third Party Complaint at ¶¶35-36. Hence, the Intervenor's mortgage loan and the Intervenor's DOT (as well as the February 12, 2018 conveyance from Smith to SJ&F) is not void *ab initio* but is merely voidable if Smith can show that Intervenor is not a *bona fide* purchaser.

D. Archie v. U.S. Bank, N.A. is inapplicable to this case because Smith introduced no evidence tending to show that she lacked understanding of financial matters

In her Brief of Appellant, Smith attempts to distinguish this case from the cases Intervenor relies on and claims that Archie v. U.S. Bank, N.A., 255 A.3d 1005 (D.C. 2021) compels the conclusion that the Quitclaim Deed in this case was procured by fraud in the factum. In Archie, this Court reversed the trial court's decision to grant summary judgment to the lender in that case based on evidence that the person in Smith's position in that case (Ms. Archie) "was not a "literate and

reasonably intelligent person" when it came to real estate financing documents," holding that "Ms. Archie's testimony that she "lacked understanding in financial matters" created a triable issue as to whether she was defrauded about the content and significance of the loan documents she signed. 255 A.3d at 1017-18. In in her brief of Appellant, Smith claims without evidence that while she is literate, she is not financially literate when it comes to real estate transactions, and that she suffers from mental illness that affects her mood and perception. Smith's Brief at 34. A review of both Intervenor's and Smith's Statements of Undisputed Facts which were before the Trial Court when it granted Intervenor's Motion for Summary Judgment in this case shows that, unlike Archie, there was no evidence of whether Smith was financially literate or not before the Trial Court when it ruled that the Quitclaim Deed was not procured by fraud in the factum.

Smith attempts to bootstrap her claim that she was not Archie with the reference to footnote 12 on page 34 of her brief wherein she quotes the Trial Court's comment when ruling on Intervenor's Motion to Reconsider that Smith was not obligated to research, North Carolina corporate records to discern whether or not she was a member of SJ&F. On the contrary, however, in discovery Smith produced a document Bates Stamped "Smith00236" affirming that Smith successfully completed a job readiness program in August 1999 during which Smith "demonstrated tremendous initiative and completed workshops in interview

techniques, financial literacy, and budgeting skills." And a review of the entire record in this case discloses not a single reference to the words "mental illness" used by Smith's counsel in Smith's Brief. Appellant's Brief at page 34. If Smith is referring to the anguish she claims to have suffered when she discovered that she was not a member of SJ&F and that Jefferson was trying to obtain a loan secured by the Property in support of her emotional distress claim against Jefferson, it is submitted that this is irrelevant do a determination of Smith's mental state when she signed the Quitclaim Deed because the deed was signed before Smith claims that she discovered Jefferson's supposed fraud. There being no evidence before the Trial Court that Smith was not financially literate when she signed the Quitclaim Deed, the Trial Court was correct when it granted Intervener's Motion for Summary Judgment, on the basis, that the Quitclaim Deed was not procured by fraud in the factum.

II. Intervenor is a *Bona Fide* Purchaser without Actual, Constructive or Inquiry Notice of any Alleged Wrongdoing Prior to the Closing of Its Loan and Disbursement of the Proceeds to SJ&F and others.

A. The Supposed "Red Flags" Alleged by Smith did not give rise to Inquiry Notice.

Intervenor had no notice of any facts or circumstances or the alleged mortgage foreclosure fraud scheme nor any indication that there was any alleged impropriety on the part of the borrower at the time of the October 8, 2018 closing of the mortgage with SJ&F. Therefore, Intervenor is a *bona fide* purchaser for value with no notice

of Smith's claim to the Property, and any loss in this case should fall onto Smith, who dealt voluntarily with the alleged foreclosure rescue scam artists who committed the alleged wrongdoing.

Intervenor has shown that it is a *bona fide* purchaser because it had no Notice of Smith's clams before the proceeds of its loan were disbursed on October 10, 2015. Smith attempts to overcome this by claiming that Intervenor was on inquiry notice (as opposed to actual or constructive notice) of the alleged fraud scheme based on events that occurred after execution of Intervenor's DOT and receipt of over $114,000 of the proceeds of Intervenor's loan. Essentially, Smith is asking this Court to ascribe information that Intervenor discovered subsequent to the disbursement of its loan proceeds to SJ&F. However, this is not how inquiry notice works.

Inquiry notice imputes knowledge when the circumstances are such that they would have aroused the suspicion of an ordinary purchaser or secured lender. However, the basis for Smith's claim of inquiry notice is "the contemporaneous records of processing the loan and public information concerning its loan processes" that all occurred after Intervenor's DOT was executed." Smith's Opposition to Intervenor's Motion to Reconsider and Motion to Dismiss ("Oppo. Mot. Rec.") at p. 16. App. 217 at ¶55; App. 363. Smith admits, however, that "[h]owever, Intervenor's own contemporaneous notes and emails related to Third-party

Defendant's loan, ostensibly produced in its motion for summary judgment, demonstrate that it knew of Ms. Smith's allegations as early as October 17, 2018 – just days after issuing the loan and before all payoffs were made." (emphasis added).[2] Oppo. Mot. Rec. at p. 2. App. 217 at ¶55. Despite her best-efforts, Smith has admittedly failed to show that Intervenor possessed inquiry notice prior to the disbursement of its loan proceeds. Moreover, Smith has not cited any caselaw that provides for this retroactive application of inquiry notice, because there is none. As such, Intervenor was a *bona fide* purchaser at the time it made the loan secured by Intervenor's DOT.

The "evidence" Smith refers to in asserting Intervenor was on inquiry notice is insufficient. First, Smith claims that her continued possession of the property is evidence of inquiry notice. Oppo. Mot. Rec. at p. 17. App. 217 at ¶55. However, the continued possession of property by the seller will not put subsequent purchasers on notice of the seller's claim, where the seller has signed a fee simple deed, which has been recorded. Chen, *supra*, 786 F. Supp.2d at 137. Next, Smith cites to the Quitclaim Deed itself as evidence of notice. Oppo. Mot. Rec. at p. 17. Also, the notion that that a quitclaim deed is enough, in itself, to put a purchaser on notice of

[2] Smith ignores the fact that Intervenor received payoffs from all of Smith's lienholders on the Property and those payoffs were received by Smith's creditors, but that months later, Rushmore returned the tendered payoff from the Settlement Agent and that DCHA never cashed its payoff check. App. 218 at ¶47.

a defect in title or is not so unusual that a purchaser should be wary of the validity of this type of conveyance, "is now disfavored." *See*, Martinez v. Affordable Hous. Network, Inc., 123 P.3d 1201, 1207-08 (Col. 2005). Smith cites no D.C. law for this proposition and is apparently not aware of the wide use of quitclaim deeds in legitimate real estate transactions. Third, Smith refers to the fact that the liens on Property were not all satisfied. Oppo. Mot. Rec. at p. 17-18. Yet, Smith ignores that Intervenor obtained payoffs from all of the lienholders and that Intervenor's attempted payoff with Rushmore was wrongfully rejected months after the loan closing. Fourth, Smith cites to "purchaser's failure to obtain title insurance" from an October 17, 2018 note in Intervenor's 105-pages of contemporaneous notes and emails. Oppo. Mot. Rec. at p. 18. App. 217 at ¶55. Importantly, this note is dated after the closing of Intervenor's mortgage loan and DOT (App. 214 at ¶33) and is not evidence of inquiry notice prior to the October 8, 2018 closing. Moreover, despite that note, it is a fact that SJ&F obtained title insurance for the Property. App. 215 at ¶34. Next, Smith refers to "the fact that the purchaser paid significantly less than market value for the property." Oppo. Mot. Rec. at p. 18, App. 217 at ¶55. The HUD-1 (App. 221) demonstrates that SJ&F paid or attempted to pay approximately $95,000.00 in liens and judgments in consideration for the Property, and Smith has put forward no evidence that SJ&F paid significantly less than market value for the Property. App. 215 at ¶35. Lastly, Smith cites to "any other suspicious

circumstances, including unusual circumstances at the closing." Oppo. Mot. Rec. at p. 18. App. 217 at ¶55. Yet, Smith fails to identify any "suspicious circumstances" that Intervenor was aware of that occurred prior to Intervenor's DOT.

Smith argues that whether such above-described circumstances would have put a person of ordinary prudence notice or led them to inquire further is a jury question in all but extreme circumstances. Oppo. Mot. Rec. at p. 18. However, despite Intervenor's voluntary disclosure of the entire 105-pages of contemporaneous notes and emails related to the closing of Intervenor's mortgage and DOT, there is no dispute of the material fact that Intervenor was not on inquiry notice prior to October 8. 2018, the date of the closing on the loan to SJ&F, or October 10, 2018, when the proceeds of its loan were irrevocably wired to SJ&F. Therefore, Smith fails to overcome Intervenor's demonstration of proof that it is a *bona fide* purchaser, and, as a result, Intervenor's Motion should be granted.

B. *Bona Fide* Purchaser Status is Extended to Secured Lenders.

There is a plethora of D.C. case law that shows that Intervenor is a *bona fide* purchaser whose security interest in the Property should not be voided. In Assoc. Fin. Serv. of America v. D.C., 689 A.2d 1217 (D.C. App. 1997), the personal representative of a decedent's estate conveyed the subject property to herself and then granted a deed of trust on the property to secure a loan from a lender. The District of Columbia, which had filed a Medicaid claim in the administration file of

the Estate, filed suit to set aside the deed and the deed of trust on the ground that the lender should have examined the records of the estate administration and if it had, it would have discovered the District's Medicaid claim against the Decedent. The trial court voided the deed and deed of trust, but this Court reversed, concluding that a lender which exchanged a sum of money in the form of a loan (value) for a deed of trust (interest) in property without notice of a competing claim, took good title free of any claim against the estate. 689 A.2d at 1223. This Court held that no duty of inquiry (as opposed to actual or constructive notice) was applicable in that case, in spite of the District's argument that the lender should have examined the estate administration file.

Bona fide purchaser status was also extended to lenders in Smith v. Wells Fargo Bank, 991 A.2d 20 (D.C. App. 2010), where the borrower, as attorney-in-fact for her father, used a power of attorney to execute a deed from her father to herself and a deed of trust to secure a loan from a lender. This Court affirmed the trial court's granting of the lender's motion for summary judgment. This Court held that the lender was a *bona fide* purchaser for value and without notice of the claims by the principal's other children that the power of attorney did not give the agent the power to convey the property to herself. In so holding, this Court rejected the siblings' claim that the conveyance by the attorney-in-fact to herself for nominal

consideration raised a "red flag" which put the lender on inquiry notice to check and discover that there were objects of the father's bounty other than the daughter.

Chen v. Bell-Smith, *supra*, 768 F. Supp.2d at 128, involved a foreclosure rescue scheme where "allegedly unbeknownst to [plaintiffs]" a deed of sale transferred their home from plaintiffs to defendants. Id. at 127. The plaintiffs in Chen claimed that no names were listed on the "deed of sale", and it was at least partially blank when they signed. Id. at 128. The lender in Chen (HSBC) was named as a defendant in plaintiff's lawsuit, and HSBC moved for summary judgment claiming to be a *bona fide* purchaser. *Id.* at 134. The Chen court noted that "a *bona fide* purchaser 'may obtain a valid interest in real property from someone who obtained that property by fraud,' so long as the *bona fide* purchaser 'had no notice of the fraud.'" *Id.* (citations omitted.). Likewise, "Courts in the District of Columbia have held that 'deed of trust holders' like HSBC are 'on the same legal footing as *bona fide* purchasers in matters involving title to real property' when they 'take in interest in real property in exchange for value and without notice of an outstanding claim.'" *Id.* (citations omitted).

Similarly, there was no way for Intervenor to know of Smith's allegations against SJ&F or the interest claimed by Smith in the Property before it made its loan to SJ&F and the proceeds of its loan were disbursed to Smith's creditors and SJ&F.. The February 12, 2018 conveyance raised no "red flag" putting Intervenor on inquiry

notice of an issue, and the Settlement Agent's review of the land records would not have disclosed that Smith still claimed an interest in the Property. Smith had not filed her Third-Party Complaint, nor had she contacted Intervenor's predecessors or the Settlement Company when inquiries were made for payoffs of her various liens on the Property, which Smith had to know about and or receive herself from the lienholders. Relevant to the Intervenor's status as a *bona fide* purchaser, Smith participated in supplying payoff statements for the liens placed by Smith on the Property to the Settlement Agent demonstrated that she anticipated that money such as that provided by Intervenor would be required to pay off the liens placed by Smith on the Property as part of her arrangement with SJ&F's principals. (*See*, Third Party Complaint at ¶¶22-24.)

C. The Burden was on Smith to Demonstrate that Intervenor was not a *Bona Fide* Purchaser.

Intervenor has set forth prima facie showing that it is a *bona fide* purchaser. The burden was on Smith to prove that Intervenor was not a *bona fide* purchaser. Henok v. Chase Home Fin., LLC, 890 F. Supp. 2d 65, 68 (D.D.C. 2012)[3]. Smith, in

[3] Citing IA Const. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369, 375 (Md. Ct. Spec. App. 1995) and Chen, *supra*, 768 F. Supp. 2d at 134. *See also* Clay Props., Inc. v. Wash. Post Co., 604 A.2d 890, 898 (D.C. 1992) ("The integrity of the recording system dictates that such notice must be clearly shown, and it is the claimant of an unrecorded interest who bears the burden of proof to show that the purchaser from the record title holder was on such notice.")

her Opposition to Intervenor's PDC MFSJ at pages 10-16, attempts to overcome this by claiming Intervenor was on inquiry notice (and not actual notice) of the alleged fraud scheme based on events that occurred after execution of Intervenor's DOT. Essentially, Smith is asking this Court to ascribe information that Intervenor discovered subsequent to the execution of its DOT and distributed its loan proceeds to SJ&F. However, this is not how inquiry notice works.

Intervenor agrees that inquiry notice imputes knowledge when the circumstances are such that they would have aroused the suspicion of an ordinary purchaser. However, none of the supposed "red flags" which Smith claims put Intervenor on inquiry notice of Smith's fraud claims occurred BEFORE Intervenor's DOT was executed and the proceeds of its loan were disbursed to SJ&F and Smith's creditors. The first date on which Smith might claim that Intervenor received inquiry notice of the alleged fraud was October 17, 2018 – seven (7) days after the proceeds of Intervenor's loan were disbursed to SJ&F and Smith's creditors. Despite her best-efforts Smith has failed to show that Intervenor possessed inquiry notice prior to Intervenor's DOT.

The "evidence" Smith refers to in asserting Intervenor was on inquiry notice is insufficient. First, Smith claims that her continued possession of the property is evidence of inquiry notice. However, the continued possession of property by the seller will not put subsequent purchasers on notice of the seller's claim, where the

seller has signed a fee simple deed, which has been recorded. Chen, *supra*, 786 F. Supp.2d at 137-138. Next, Smith cites to the Quitclaim Deed itself as evidence of notice. The notion that a quitclaim deed is enough, in itself, to put a purchaser on notice of a defect in title or is not so unusual that a purchaser should be wary of the validity of this type of conveyance, "is now disfavored." *See*, Martinez v. Affordable Hous. Network, Inc., 123 P.3d 1201, 1207-1208 (Col. 2005). Smith cites no D.C. law for this proposition and is apparently not aware of the wide use of quitclaim deeds in legitimate real estate transactions. Third, Smith refers to the fact that the liens on the Property were not all satisfied. Yet, Smith ignores that Intervenor obtained payoffs from all of the lienholders and that Intervenor's attempted payoff with Rushmore was wrongfully rejected months after the loan closing. Fourth, Smith cites to "purchaser's failure to obtain title insurance" from an October 17, 2018 note in Intervenor's 105-pages of contemporaneous notes and emails. Importantly, this note is dated after the closing of Intervenor's mortgage loan and DOT and is not evidence of inquiry notice prior to the October 8, 2018 closing. Moreover, despite that note, it is a fact that SJ&F obtained title insurance for the Property. App. 215 at ¶34. Next, Smith refers to "the fact that the purchaser paid significantly less than market value for the property." The HUD-1 shows that SJ&F paid or attempted to pay approximately $95,000.00 in liens and judgments in consideration for the Property, and Smith has put forward no evidence that SJ&F

paid significantly less than market value for the Property. Lastly, Smith cites to "any other suspicious circumstances, including unusual circumstances at the closing." Yet, Smith fails to identify any "suspicious circumstances" that Intervenor was aware of that occurred prior to the disbursement of the proceeds of the loan secured by Intervenor's DOT.

Smith argues that whether such above-described circumstances would have put a person of ordinary prudence notice or led them to inquire further is a jury question in all but extreme circumstances and claims that Intervenor admitted at the February 22, 2021 hearing on Intervenor's Motion to Reconsider this Court's ruling that the Quitclaim Deed was void *ab initio*. However, that was in the context of the Court's consideration of Smith's Motion to Continue Intervenor's earlier Motion for Summary Judgment based on Smith's failure to complete discovery. Now that discovery has closed, and Smith has still not been able to point to any facts which put Intervenor's predecessor on notice of the fraud claimed by Smith prior to the disbursement of Intervenor's loan proceeds, there is simply no evidence from which a jury could find that Intervenor was not a *bona fide* purchaser. There is no dispute of the material fact that Intervenor was not on inquiry notice prior to October 10. 2018. Therefore, Smith failed to overcome Intervenor's demonstration that it was a *bona fide* purchaser, and, as a result, Intervenor's Motion to for Summary Judgment against Smith on Count 7 of the Third-Party Complaint was correctly granted.

III. The operative date for determining whether Intervenor was a *Bona Fide* Purchaser for value without notice of Smith's claims was not when Intervenor's DOT was recorded on December 13, 2018 but when the proceeds of Intervenor's loan to SJ&F were disbursed by the Settlement Agent on October 10, 2018.

Smith's argument that the date of the recording of Intervenor's Deed of Trust in December 2018 is the date for determining whether Intervener was a *bona fide* purchaser for value without notice hinges upon Smith's misinterpretation of D.C. Code Section 42–401 regarding the effective date of a deed.[4] However, Smith's contention that the clause "and others interested in the property" following the statute's prior references to "creditors and subsequent *bona fide* purchasers and mortgagees without notice of the deed" includes Smith ignores the canon of statutory interpretation known as *ejusdem generis*. Gooch v. United States, 297 U.S. 124, 128 (1936). Accord, Hall St. Assocs. v. Mattel, Inc., 552 U.S. 576, 586 (2008) ("Under that rule [of *ejusdem generis*], when a statute sets out a series of specific items ending with a general term, that general term is confined to covering subjects comparable to the specifics it follows"). *See also* Antonin Scalia & Bryan A. Garner, Reading Law (2012) at 199. In other words, one should use the specific objects or things explicitly set forth in the statute to determine what other objects or things the

[4] *See* App. 467-68 for the statement by Intervenor's Expert Witness, John Llewellyn that October 8, 2018is the effective date of the Quitclaim Deed.

legislature intended to include. For example, if a statute lists "dogs, cats, horses, cattle and other animals," this canon would suggest the catchall phrase "other animals" refers to other similar animals. Scalia & Garner, *supra*, at 199. This might include animals like sheep, but not include protozoa. Similarly, the catchall phrase in D.C. Code Section 42-401 "others interested in the property" following "creditors and subsequent *bona fide* purchasers and mortgagees without notice of said deed" would include others who in reliance on the previous owner's failure to record paid value for the property and would not include Smith, who did not purchase the property for value after the proceeds of Intervenor's loan to SJ&F were disbursed on October 10, 2018 and before Intervenor's Deed of Trust was recorded on December 13, 2018. Indeed, none of the cases interpreting D.C. Code Section 42-401 held that persons in Smith's shoes constituted *bona fide* purchasers for value without notice. *See* Smart v. Nevins, 298 A.2d 217, 219 (D.C. 1972) ("It is fundamental that the purpose of recordation is to protect the rights of *bona fide* purchasers, creditors, assignees, and others relying upon the indicia of record ownership. But as between grantor and grantee, the failure of the latter to record cannot be viewed as a waiver."); Fitzgerald v. Wynne, 1 App. D.C. 107, 120-121, 1893 U.S. App. LEXIS 3015, *23-24 ("The great object of the statutes in requiring deeds of conveyance to be acknowledged and recorded is to prevent the practice of fraud upon creditors and purchasers; to furnish the means of notice and protection to innocent third parties.");

SMS Assocs. v. Clay, 868 F. Supp. 337, 342 (1994) (. . . '"[N]otwithstanding the recording act, interests in real property are legally and effectively transferred . . . even if the [conveyancing] document is not recorded. Only if a third party [presently, the plaintiff] should acquire an interest in the property without notice of the unrecorded instrument will the act intervene to deny its enforceability."'); and Young v. Howard, 120 F.2d 712, 713 (D.C. Cir. 1941) ("A primary purpose of the recordation of an instrument is to give notice of its existence to those about to deal with the property involved. Such persons are protected by, and charged with, notice of the recorded instrument. The purpose, in most instances, is not to inform those with existing interests of events purportedly affecting their property and to charge them with such knowledge.").

CONCLUSION

For the foregoing reasons it is submitted that this Honorable Court should affirm the Trial Court's decision to grant summary judgment in Intervenor's favor.

Respectfully Submitted,

By: /s/ Richard A. Lash
Richard A. Lash (D.C. Bar No. 408382)
Buonassissi, Henning, & Lash, P.C.
12355 Sunrise Valley Drive, Suite 650
Reston, Virginia 20191
Richard.Lash@bhlpc.com
703-217-5602
888-252-7739 (Fax)
Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2024, the following individuals were served by e-mail notification from the Court's filing system:

Thomas Landers, Esquire
Daniel Martin, Esquire
Meghan E. Greenfield, Esquire
P.O. Box 7611
Washington, DC 20044
T: (301) 442-0134
Email: LandersProBono@gmail.com

Nationstar Mortgage, LLC
D/B/A Mr. Cooper
c/o Peter J. Duhig
500 East Pratt Street, Suite 1000
Baltimore, MD 21202

Via express mail to:

SJ&F Builders, LLC
1628 Turkey Highway
Clinton, MD 28328

Gregory Allen Jefferson
6401 Seta Drive
Lanham, MD 20706

Gerard Fryar *
1404 12th St. NW #102
Washington, DC 20005
8611 Sumter Lane
Clinton, MD 20735

/s/ Richard A. Lash
Richard A. Lash

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/ Richard A. Lash
Signature

23-cv-0189
Case Number(s)

Richard A. Lash
Name

1/22/2024
Date

richard.lash@bhlpc.com
Email Address