Nos. 23-CV-492 & 23-CV-669

District of Columbia Court of Appeals

SARAH STAAB,

Defendant–Appellant,

v.

WELLS FARGO BANK, N.A.,

Plaintiff–Appellee.

Appeal from the Superior Court of the District of Columbia, Civil Division
Case No. 2015-CA-004100-(R)(RP), before Hon. Fern F. Saddler and
Hon. Maurice A. Ross

BRIEF OF APPELLEE WELLS FARGO BANK, N.A.

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RULE 28(A)(2) DISCLOSURE

Pursuant to D.C. App. R. 28(a)(2), below is a list of all known parties, intervenors, amici curiae, and counsel in the trial court and appellate proceeding:

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RULE 26.1(A) CORPORATE DISCLOSURE STATEMENT

Pursuant to D.C. App. R. 26.1(a), Wells Fargo Bank, N.A. states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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PRELIMINARY STATEMENT

This appeal concerns the validity and enforceability of a federally protected deed of trust securing a loan that has been in default for more than a decade. Appellee Wells Fargo Bank, N.A. ("Wells Fargo") brought the underlying foreclosure litigation in 2015 to enforce the deed of trust at issue; as a practical matter, foreclosure embodies the only mechanism to collect any material portion of the debt that this deed of trust secures.

Appellant Ms. Sarah Staab ("Ms. Staab") initially contended that a foreclosure by the Residential Association of the Pennsylvania ("COA") on its lien for unpaid assessments extinguished the deed of trust at issue, preventing any enforcement. Whatever merit that theory might have under District of Columbia law generally, it cannot prevail here. That is because a federal statute protects all property of Federal Housing Finance Agency ("FHFA") conservatorships from impairment or extinguishment by state (or D.C.) law, and the deed of trust at issue is property of an entity in FHFA's conservatorship—the Federal National Mortgage Association ("Fannie Mae"). Thus, the Superior Court held that the COA foreclosure sale was void and therefore Fannie Mae's lien remains a valid and enforceable encumbrance against the relevant property.

In this appeal, Ms. Staab abandons her merits position, arguing instead that procedural issues should have allowed her to avoid the merits entirely. As described

below, the Superior Court properly rejected Ms. Staab's arguments on those points. The Superior Court's decision and analysis are not only correct standing on their own, but they are also consistent with the uniform outcomes of other, similar cases in the Superior Court, and of the great weight of authority from other jurisdictions.

Wells Fargo respectfully submits that the Court should promptly affirm the Superior Court's decision, bringing this long-running dispute to a close and at long last allowing for some limited recovery on the long-defaulted underlying loan.

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction because the Superior Court entered a final judgment against Ms. Staab after granting the summary judgment motion filed by Wells Fargo and denying the summary judgment motion filed by Ms. Staab, thereby disposing of all claims by all parties.

STATEMENT OF THE ISSUES

1. Whether the Superior Court properly exercised its broad discretion by granting Wells Fargo's motion for leave to amend its complaint to add claims involving the same relevant property to avoid needless delay following issuance of a new and highly relevant decision resolving a key point of law.
2. Whether the Superior Court properly deemed the amended claims timely.
3. Whether the Superior Court properly determined that the COA was not an indispensable party.

STATEMENT OF THE CASE

On June 3, 2015, Wells Fargo filed the original Complaint under D.C. Code § 42-816 against the borrower William J. Sutcliffe ("Mr. Sutcliffe") and Ms. Staab, seeking judicial foreclosure of real property located at 601 Pennsylvania Ave. NW, #308 in Washington, D.C. ("Property"). (*See* JA031-97). The original Complaint attached the deed from the October 15, 2013 condominium foreclosure sale ("Condo Sale") (*see* JA042), alleged that Ms. Staab holds title "by virtue of" the Condo Sale, (*see* JA031-32), and sought a judgment that the "Property is to be sold to satisfy [Wells Fargo's] Deed of Trust." (*See* JA038).

On July 27, 2015, Ms. Staab filed an Answer which included the assertion that "any interest [Wells Fargo] may have had in the Property was extinguished by the [Condo] [S]ale[.]" (*See* JA103 ¶ 5).

Mr. Sutcliffe failed to appear after numerous personal service attempts (leading to service by publication), and at the Status Hearing held on July 13, 2018, the Superior Court entered default against Mr. Sutcliffe based on his failure to respond to the original Complaint. (*See* JA011).

On February 13, 2019, Wells Fargo moved for leave to amend the original Complaint. (*See* JA106-09). Ms. Staab opposed the motion on February 27, 2019, and Wells Fargo filed its reply on March 5, 2019. (*See* JA180-88; JA197-200). On March 7, 2019, the Superior Court granted Wells Fargo's motion. (*See* JA212-14).

Wells Fargo filed its Amended Complaint on March 11, 2019. (*See* JA215-82). The Amended Complaint joined the COA as a defendant, retained the original Complaint's judicial foreclosure claim against Ms. Staab, and asserted additional claims which included, as against Ms. Staab, claims for declaratory judgment and quiet title under 12 U.S.C. § 4617(j)(3) ("Federal Foreclosure Bar"), and declaratory judgment to quiet title and void the Condo Sale in the alternative. (*See* JA114-28). On August 20, 2019, the COA was dismissed without prejudice. (*See* JA297).

Ms. Staab and Wells Fargo filed cross motions for summary judgment on September 29, 2022, and October 3, 2022, respectively. (*See* JA299-312; JA352-90). The motions were fully briefed, (*see* JA397-415; JA424-44; JA445-50; JA451-56), and the Superior Court heard oral argument on March 13, 2023. (*See* JA457-500). On May 9, 2023, the Superior Court granted Wells Fargo's summary judgment motion and denied Ms. Staab's summary judgment motion. (*See* JA501-12).

The primary issue before the Superior Court was whether the Federal Foreclosure Bar preempts D.C. Code § 42-1903.13(a)(2) ("D.C. Condominium Act"). (*See* JA506). The Superior Court rightly interpreted and applied the powers and protections Congress granted to FHFA as Conservator and concluded, *inter alia*, that the language of the two statutes "evidence a clear conflict," that the Federal Foreclosure Bar preempts the D.C. Condominium Act as to "foreclosure on super-priority liens attached to property held under FHFA's conservatorship," that the

relevant foreclosure sale "was conducted in contravention of [the Federal Foreclosure Bar] and is, therefore, void as a matter of law," and that the Federal Foreclosure Bar "preempts the equitable remedies sought by [Ms.] Staab under District of Columbia law." (*See* JA507; JA509). The Superior Court entered judgment on May 10, 2023 (*see* JA525-26), which Ms. Staab appealed on June 8, 2023 (*see* JA537).

After the Superior Court closed the case before entering the decree of sale, on June 2, 2023, Wells Fargo filed a motion for reopen (*see* JA527-28) seeking entry of the decree of sale. (*See* JA554-58). On July 5, 2023, the Superior Court granted the motion for reopen and entered a decree of sale (*see* JA559), which Ms. Staab also appealed on August 3, 2023 (*see* JA560). On September 5, 2023, the Court of Appeals consolidated appeals 23-cv-0492 and 23-cv-0669 for all purposes.

STATEMENT OF THE FACTS

I. The Secondary Mortgage Market

Congress chartered Fannie Mae to facilitate the nationwide secondary mortgage market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation. *See Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017). Congress has confirmed that "the continued ability of [Fannie Mae] … to accomplish [its] public mission[] is important to providing housing in the United States and the health of the Nation's economy." 12 U.S.C. § 4501.

Although Fannie Mae owns millions of mortgage loans across the country, it is not in the business of routine loan administration, such as handling day-to-day borrower communications. Rather, Fannie Mae contracts with loan servicers such as Wells Fargo to act on its behalf. These servicers are often assigned deeds of trust as the record beneficiary to facilitate their efficient management of those loans. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011) (describing how loan owners contract with servicers and the servicers' role); *U.S. ex rel. Schneider v. J.P Morgan Chase Bank, N.A.*, 224 F. Supp. 3d 48, 52 n.3 (D.D.C. 2016) (same); Restatement (Third) of Prop.: Mortgages § 5.4 cmt. c (describing a common practice in the secondary mortgage market, in which investors designate servicers as mortgage assignees).

II. FHFA and Fannie Mae in Conservatorship

In July 2008, in the midst of the Great Recession and the near collapse of the national housing market, and with it, the national economy, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4617 *et seq.* ("HERA"), which established the Federal Housing Finance Agency ("FHFA") as an independent federal agency with regulatory and oversight authority over Fannie Mae, the Federal Home Loan Mortgage Corporation ("Freddie Mac," and together with Fannie Mae, "Enterprises"), and the Federal Home Loan Banks.

On September 6, 2008, acting under its authority under HERA, the Director of FHFA placed Fannie Mae into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs," *see* 12 U.S.C. § 4617(a)(2), at which point FHFA as Conservator succeeded by law to "all rights, title, powers, and privileges" of Fannie Mae. *See* 12 U.S.C. § 4617(b)(2)(A)(i).

Congress authorized the Conservator "to undertake extraordinary economic measures" out of a concern that "a default by Fannie and Freddie would imperil the already fragile national economy." *Perry Capital*, 864 F.3d at 599. Accordingly, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator. *See generally* 12 U.S.C. § 4617.

Among the protections that Congress granted to conservatorship property is the Federal Foreclosure Bar, which provides that "[n]o property of [an FHFA conservatorship] shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." *M&T Bank v. Brown*, No. 1:19-cv-00578-JMC, 2022 WL 7003740, at *2 (D.D.C. Oct. 12, 2022) (brackets in original) (quoting 12 U.S.C. § 4617(j)(3)).

III. Facts Specific to this Case

A. The Subject Property, Note, and Deed of Trust

On February 22, 2006, Mr. Sutcliffe obtained a mortgage loan from Wells

Fargo in the amount of $193,000, executed a promissory note ("Note") evidencing the terms of the mortgage loan, (*see* JA242-44; JA360 ¶ 2; JA399 ¶ 2; JA513-14), purchased the Property, and executed a deed of trust ("Deed of Trust" and together with the Note, "Loan") pledging the Property as collateral for Mr. Sutcliffe's promise to repay the Loan. (*See* JA245-66; JA360 ¶ 3; JA399 ¶ 3; JA513-14).

In April 2006, Fannie Mae acquired ownership of the Loan and succeeded to Wells Fargo's interest as the original lender, and Wells Fargo became servicer of the Loan for Fannie Mae. (*See* JA514). Fannie Mae continued to maintain its ownership, and Wells Fargo continued to hold the Note and service the Loan for Fannie Mae at all relevant times, including the October 15, 2013 Condo Sale. (*See* JA369; JA514; JA517).

B. Mr. Sutcliffe's Default of the Loan and Failure to Cure

By mid-2011, Mr. Sutcliffe had failed to make payments as they became due and thus defaulted under the terms of the Note and Deed of Trust. (*See* JA267-68). Accordingly, on or about September 4, 2011, pursuant to the Deed of Trust, Wells Fargo caused to be mailed a demand letter to Mr. Sutcliffe, stating the nature of the default and the actions necessary to cure the default. (*See id.*). Mr. Sutcliffe failed to cure the default as required by the demand letter, Note, and Deed of Trust, and as a result, the Loan was accelerated. (*See* JA362 ¶ 13; JA400 ¶ 13).

The Loan has been due and owing since the July 1, 2011, monthly payment.

(*See* JA258 ¶ 22; JA362 ¶ 14; JA400 ¶ 14). Interest, taxes, insurance, attorneys' fees, and other costs continue to accrue daily, and incurred costs and legal fees may be added to the debt consistent with the Deed of Trust. (*See* JA258 ¶ 22; JA362 ¶ 14; JA400 ¶ 14).

C. The Condo Sale and Ms. Staab's Purported Property Acquisition

On June 1, 2012, a Notice of Condominium Lien for Assessments Due was recorded in the land records of the District of Columbia as Instrument No. 2012058968 ("2012 Condo Lien") which referenced unpaid assessments owed by Mr. Sutcliffe to the COA, due from August 10, 2011 through December 31, 2012 in the amount of $10,622.68. (*See* JA273).

On May 30, 2013, a Notice of Condominium Lien for Assessments Due was recorded in the land records of the District of Columbia as Instrument No. 2013062345 ("2013 Condo Lien") which referenced unpaid assessments due in 2013 in the amount of $4,605.04. (*See* JA274).

The COA sent a letter dated September 10, 2013 to Mr. Sutcliffe regarding notice of arrears in the monthly assessments and other charges and intent to conduct a foreclosure sale on October 15, 2013. (*See* JA275-76; JA363 ¶ 18; JA401 ¶ 18).

On September 10, 2013, a Notice of Foreclosure Sale of Condominium Unit for Assessments Due was recorded in the land records of the District of Columbia as Instrument No. 2013104172 ("Condo Sale Notice"). (*See* JA277-78). The Condo

Sale Notice referenced unpaid assessments for the entire amount due on the lien in the amount of $20,428.43, and indicated that a foreclosure sale of the Property was scheduled for October 15, 2013. (*See* JA277-78).

On October 15, 2013, the COA foreclosed on its lien and pursuant to the Condo Sale Notice, sold the Property for $15,000 to Ms. Staab, the highest bidder at the Condo Sale, as evidenced by the Condo Deed dated November 19, 2013 and recorded in the land records of the District of Columbia as Instrument No. 2013136124 on December 9, 2013. (*See* JA238-39). The Conservator did not consent to the Condo Sale. (*See* JA554).

At no point during the 11-year period that the Loan has been in default did Ms. Staab pay anything toward Fannie Mae's lien, agree to make any payments, or assume the Loan to make it current. (*See* JA364 ¶ 23; JA401 ¶ 23).

SUMMARY OF ARGUMENT

Ms. Staab does not contest the Superior Court's merits holding that HERA voids the COA Sale and thereby preserves Fannie Mae's lien as a valid encumbrance against the Property. Instead, Ms. Staab takes issue with three preliminary, and largely procedural, rulings. Specifically, Ms. Staab contends that: (1) the Superior Court abused its discretion in granting leave to amend the complaint, (2) the amended claims were untimely, and (3) the COA was an indispensable party. (*See* JA507; JA509).

Ms. Staab is wrong on all counts. The Superior Court did not abuse its discretion by granting leave to amend because leave is to be liberally granted and because the record demonstrates that the Superior Court considered all relevant factors. The amended claims are not time-barred based on multiple theories under D.C. and federal law. The COA is not indispensable because complete relief can be accorded between Wells Fargo and Ms. Staab, the COA can protect its own interests in a later action, there is no risk of inconsistent obligations, and the COA can be rejoined if needed. Thus, the Court of Appeals should affirm and dismiss the appeal.

ARGUMENT

I. Leave to Amend Was within the Superior Court's Broad Discretion

Ms. Staab argues that the Superior Court should have denied leave to amend as untimely. Mot. at 11. As discussed below, that is not correct, but in any event, the decision falls well within the Superior Court's broad discretion.

The Court of Appeals reviews the issue of amendment for abuse of discretion. *Gordon v. Raven Sys. & Rsch., Inc.*, 462 A.2d 10, 13 (D.C. 1983). The Superior Court has "wide discretion," *see Blake Constr. Co. v. Alliance Plumbing & Heating Co.,* 388 A.2d 1217, 1220 (D.C. 1978), and "[i]n the absence of manifest error, amounting to an abuse of that discretion, the decision of the trial court to grant … such motion is not reviewable on appeal." *See Vasaio v. Campitelli,* 222 A.2d 710, 711 (D.C. 1966) (citation omitted).

Leave to amend "shall be freely given when justice so requires," *see* Super. Ct. Civ. R. 15(a)(3), and five factors guide courts in exercising their discretion:

(1) "the number of requests to amend;"
(2) "the length of time that the case has been pending;"
(3) "the presence of bad faith or dilatory reasons for the request;"
(4) "the merit of the proffered amended pleading;" and
(5) "any prejudice to the non-moving party."

See Pannell v. District of Columbia, 829 A.2d 474, 477 (D.C. 2003).

Here, the Superior Court did not abuse its discretion in granting leave to amend, and Ms. Staab failed in her burden to show that any manifest error occurred. The Superior Court considered each of the five factors, and its sound analysis suggests that while the second factor may favor Ms. Staab, the other four factors (including the focus of Ms. Staab's appeal, the third factor) favored Wells Fargo. Ms. Staab's scattered allegations of error do not hold up against the Superior Court's well reasoned decision, which was well within its broad discretion to make.

A. The Superior Court Properly Considered Each Factor

As discussed below, the record shows that the Superior Court considered arguments on all five factors, exercised sound discretion, and ultimately found "good cause" to grant leave to amend. (*See* JA213).

1. Number of Requests to Amend

As for the first factor, "the number of requests to amend," *see Pannell*, 829 A.2d at 477, it is undisputed that Wells Fargo made but a single request to amend. (*See* JA106; JA012). This is not, therefore, a case where a plaintiff had made serial

amendments. Nor, because Wells Fargo amended only once, is there any conceivable argument here that the substance of a later amendment could or should have been included in an earlier amendment. *See Crowley v. N. Am. Telecomms. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997) (holding that the trial court abused its discretion in denying motion to amend the complaint, where "[t]he record reflects no other request to amend the complaint," especially "considered with the virtual presumption in favor of granting leave to amend, and the absence of any cogent reasons for denying the request.").

The Superior Court clearly had this first factor in mind when it observed that its decision was based "upon consideration of … the entire record herein," (*see* JA213), as the entire record reflects that on February 13, 2019, Wells Fargo made its one and only request for leave to amend. (*See* JA106; JA012). Accordingly, the Superior Court properly found that the first factor weighs in favor of Wells Fargo.

2. Length of Time That the Case Has Been Pending

As for the second factor, "the length of time that the case has been pending," *see Pannell*, 829 A.2d at 477, the initial complaint was filed on June 3, 2015. (*See* JA031).

The Superior Court noted that "[g]iven the length of time this case has been pending, [Ms. Staab's] argument that [Wells Fargo's] Motion is untimely has merit." (*See* JA213). The Superior Court ruled, however, that other factors favoring

amendment weighed more heavily in its discretionary analysis.

The Superior Court did not provide a detailed explanation on the point, but it stands to reason that all parties, and the courts, benefit from efficient and expeditious litigation. Wells Fargo agrees and certainly has no incentive to delay or prolong the proceedings. To the contrary, it is in Wells Fargo's interest to resolve the dispute promptly—unless and until the judgment becomes final, as a practical matter, Wells Fargo cannot enforce the underlying lien interest or collect on the Loan. Under the circumstances, the Superior Court had ample discretion to hold that the timing of the motion for leave to amend did not warrant denial.

3. Presence of Bad Faith or Dilatory Reasons for the Request

As for the third factor, "the presence of bad faith or dilatory reasons for the request," *see Pannell*, 829 A.2d at 477, Ms. Staab argues that "[Wells Fargo] offers no reason … why it could not have included these claims at the beginning of this case." (*See* JA185). But Wells Fargo already gave a clear explanation:

> there is good cause as to why [Wells Fargo] did not file these claims initially. The issue of whether the servicer of a loan owned by … [Fannie Mae] … has standing to argue that 12 U.S.C. § 4617(j)(3) preempts state law was recently decided by the Supreme Court of Nevada and the court held that it did. … [Wells Fargo's] Motion is filed within a reasonable time of discovering the ability to assert the additional claims in its proposed amended complaint.

(JA198). Wells Fargo even attached the decision in its reply. (JA201-11); *see Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 248 (2017).

As Wells Fargo's briefing explained, its motion to amend was intended "*to prevent any unnecessary delay* should [Wells Fargo] have to file a separate action and either seek to stay or consolidate this matter," as "it would be more efficient to allow [Wells Fargo] to amend its complaint than, for example, to stay this case until [Wells Fargo's] new case against the [COA] is resolved." (*See* JA197-98). As Wells Fargo explained, "[i]t would serve justice and economy by having … the declaratory claims, monetary claims and judicial sale claim resolved within the same case because they both involve the Property. Also, substantially similar facts would support a dispositive motion on all claims." (*See* JA108).

The Superior Court considered the third factor, as evidenced when it stated that it "believes that [Wells Fargo's] argument, that this amendment is in response to a change in the existing law, is sufficient to warrant leave to amend," (*see* JA213), and that it "finds [Wells Fargo's] argument, that a separate action against the [COA] would cause needless delay in this matter, to be persuasive." (*See id.*).

4. Merit of the Proffered Amended Pleading

As for the fourth factor, "the merit of the proffered amended pleading," *see Pannell*, 829 A.2d at 477, Ms. Staab argued that "it is not clear that [Wells Fargo] even has standing to assert the preemption claim." (*See* JA187). But as Wells Fargo explained to the Superior Court, such an argument was premature, as it relied on decisions applying Super. Ct. Civ. R. 12(b)(l), which governs motions to dismiss,

not motions to amend. (JA198-99). Further, the argument lacked support. Wells Fargo's motion to amend was informed by the Nevada Supreme Court's holding that a servicer "has standing to argue that 12 U.S.C. § 4617(j)(3) preempts state law." (JA198). But Ms. Staab cited no contrary decisions on standing, nor did she cite any "law requiring [Wells Fargo] *to prove* standing in order to seek leave to amend." (*See* JA199) (emphasis added).

The Superior Court considered the fourth factor, as evidenced by its remarks that it "believes that [Wells Fargo's] argument, that this amendment is in response to a change in the existing law, is sufficient to warrant leave to amend," and that "[u]ltimately, the [Superior] Court believes that the party and claims [Wells Fargo] seeks to add will allow for the most efficient resolution of the claims already before the [Superior] Court in this case." (*See* JA213). It is also evidenced by summary judgment in Wells Fargo's favor on a finding that 12 U.S.C. § 4617(j)(3) preempts state law. (*See* JA513-24).

5. Prejudice to the Non-Moving Party

As for the fifth factor, "prejudice to the non-moving party," *see Pannell*, 829 A.2d at 477, Wells Fargo argued to the Superior Court that "the granting of this Motion will not prejudice [Ms. Staab or the COA], nor would it delay the further prosecution of this case given that trial in this matter has not yet been scheduled. Rather, if the relief sought is denied, [Wells Fargo] will be prejudiced by needing to

file an unnecessary separate action, which would unnecessarily delay this case," partly because the two actions would "both involve the Property" and "substantially similar facts" and thus could be "resolved within the same." (*See* JA108). Wells Fargo also argued that "concerns of prejudice" were also inapplicable because "[h]ere, judgment has not been entered," so all relevant claims could be resolved together. (*See* JA198).

The Superior Court clearly had this fifth factor in mind when it observed that "the newly added claims involve a dispute over the same property already at issue in this case." (*See* JA213). This position proved accurate, as the matter was timely resolved on summary judgment after Wells Fargo amended the complaint.

B. Ms. Staab's Manifest-Error Arguments Are Unpersuasive

As discussed below, Ms. Staab asks the Court of Appeals to weigh in on arguments the Superior Court already rejected. *See* Mot. at 12-19. But the decision is reviewed for abuse of discretion, not de novo. *Gordon*, 462 A.2d at 13. Ms. Staab failed to show any source of manifest error, as she instead repeats old arguments in hope of a different outcome. *See* Mot. at 12-19. Even if the Court of Appeals might have approached the issue somewhat differently—and Ms. Staab provides no compelling reason why it would have—the absence of any abuse of discretion by the Superior Court requires an affirmance.

1. Number of Requests to Amend

As for the first factor, Ms. Staab does not argue any error occurred.

2. Length of Time That the Case Has Been Pending

As for the second factor, Ms. Staab offers only the conclusory argument that the delay "do[es] not support the lower court's ruling." *See* Mot. at 13. But Ms. Staab ignores that *all of the other factors* favored Wells Fargo. (*See* JA213). This evidences sound legal reasoning by the Superior Court, not manifest error.

3. Presence of Bad Faith or Dilatory Reasons for the Request

As for the third factor, Ms. Staab reiterates her Superior Court argument that "Wells Fargo did not offer any explanation why it did not assert the claims in its Amended Complaint in its original Complaint." Mot. at 14. But Ms. Staab ignores Wells Fargo's clear explanation to the Superior Court: The motion was intended to prevent unnecessary delay following a decision from the Nevada Supreme Court that resolved a key point of law regarding Wells Fargo's standing to bring the amended claims. (*See* JA197-98).

Ms. Staab also speculates as to whether Wells Fargo moved to amend "only after defeat seemed imminent" under *Chase Plaza*, *Liu,* and *4700 Conn*.[1] Mot. at 14-18. But Ms. Staab misapplies this factor: As confirmed by a case Ms. Staab cites,

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[1] *See Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166 (D.C. 2014); *Liu v. US. Bank, N.A.*, 179 A.3d 871 (D.C. 2018); *4700 Conn 305 Tr. v. Capital One, N.A.*, 193 A.3d 762 (D.C. 2018).

timing could only ever be "suggestive," not conclusive, of a "dilatory approach." *Molovinsky v. Monterey Co-op., Inc.*, 689 A.2d 531, 534 (D.C. 1996); *see* Mot. at 14 (citing *Molovinsky*). And that decision favors Wells Fargo, not Ms. Staab—in *Molovinsky*, unlike here, "discovery had been completed," "summary judgment had been granted" on one claim, and "it appeared that the SOL would foreclose" the other. 689 A.2d at 534. Here, by contrast, the amendment was offered while discovery was ongoing, *see* Mot. at 13, summary judgment was not yet briefed, (*see* JA001-30), and Ms. Staab failed to raise any statute-of-limitations arguments when opposing Wells Fargo's motion for leave to amend.[2] (*See* JA180-89).

Ms. Staab next argues "that discovery was nearly completed" and that this should have "weighed heavily against granting the amendment." *See* Mot at 13. But Ms. Staab does not argue that the amendment had any unduly prejudicial effect on the course of discovery. And after the amendment was granted, Ms. Staab's only additional discovery related to Fannie Mae's ownership, a straightforward issue that was resolved with ample and unambiguous evidence. Regardless, Ms. Staab cites nothing to suggest that it was a manifest error to grant an amendment when discovery was "nearly complete." In fact, as recognized by a case Ms. Staab cites, even "the passage of time and *close of discovery* preceding a motion to amend *do not* ordinarily in and of themselves call for denial of the motion[.]" *Sherman v. Adoption Ctr. of*

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[2] The amended claims were, in fact, timely, as discussed below. *See supra* § II.

Washington, Inc., 741 A.2d 1031, 1038 (D.C. 1999) (emphasis added); *see* Mot. at 13-14 (citing *Sherman*).

Finally, Ms. Staab asserts that the amendment was offered in bad faith because Wells Fargo was supposedly "contractually obligated to" pay liens on past-due assessments, which, she claims, "could have prevented the foreclosure sale from going forward." Mot. at 14. This argument concerns the merits, not whether the motion to amend was offered in good faith. But in any event, it is unfounded and incorrect. As a non-party to the contract, Ms. Staab may not rely on or enforce its terms. *Fields v. Tillerson*, 726 A.2d 670, 672-73 (D.C. 1999). And, in any event, the contract cannot supersede the Federal Foreclosure Bar's protection of conservatorship assets, regardless of other protections. *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017). The contract requires servicers to pay assessments *where necessary to protect Fannie Mae's lien*. But here, Fannie Mae is under FHFA's conservatorship, so paying assessments was *not* necessary: the Federal Foreclosure Bar protected Fannie Mae's interest regardless, as the Superior Court rightly confirmed. (*See* JA507-10).

4. Merit of the Proffered Amended Pleading

As for the fourth factor, Ms. Staab does not substantively address the merits of the amended pleading itself, and she instead argues that Wells Fargo "could have included all of the claims made in its Amended Complaint in its original Complaint,"

which "weighed heavily against granting the amendment." *See* Mot at 13. But the Superior Court was persuaded by Wells Fargo's argument that a decision resolving a key point of law warranted leave to amend, and Ms. Staab fails to cite a single decision suggesting that this reasoning comprised manifest error.

5. Prejudice to the Non-Moving Party

As for the fifth factor, Ms. Staab failed to identify any specific prejudice. Instead, she reiterated that there was no "satisfactory reason for the delay," and theorized that an unspecified prejudice might arise "because expanding the litigation and reopening discovery to encompass the new claims would cause [her] to incur additional delay and expense." (*See* JA186) (citations and quotations omitted). But here, no discovery was needed as to Wells Fargo's *purely legal* claims related to same subject matter: the Property.

II. The Superior Court Correctly Deemed the Amended Claims Timely

Ms. Staab's second major contention is that the amended claims were supposedly "time-barred." *See* Mot. at 19-21. Again, she is mistaken. The Court of Appeals reviews the issue de novo, construing the record in the light most favorable to Wells Fargo, *see Saucier v. Countrywide Home Loans*, 64 A.3d 428, 437 (D.C. 2013), and here, the claims are timely under both federal and D.C. law.

A. The Claims Are Timely under Federal Law

In the summary judgment decision on appeal, the Superior Court found that "the six-year statute of limitations for claims brought under HERA applies," and that

accordingly, the amended claims were "timely and may proceed." (*See* JA505-06). On appeal, Ms. Staab recognizes that 12 U.S.C. § 4617(b)(12)(A) provides a six-year period for "any contract claim," and a three-year period for "any tort claim," *see* Mot. at 20, but Ms. Staab contends that HERA's limitations provision may not apply, or alternatively, that the three-year tort period governs. Neither is correct.

First, Ms. Staab argues that 12 U.S.C. § 4617(b)(12)(A) may not apply to "actions by parties such as [Wells Fargo] as servicer." Mot. at 20. Not so. The statute applies to claims brought by FHFA as well as Fannie Mae and its servicers. *See M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 858 (9th Cir. 2020). That is because Fannie Mae "stands in the shoes of the FHFA" in claims involving conservatorship assets, and its servicer "stands in the same shoes as its assignor," here, Fannie Mae. *M&T Bank*, 963 F.3d at 857-58 (quotations omitted). As the Nevada Supreme Court stated in *JPMorgan Chase Bank v. SFR Invs. Pool 1, LLC*:

> a loan servicer … can raise the Federal Foreclosure Bar on the FHFA's behalf without joining the FHFA or the regulated entity that owns the loan as a party to the action. That is so because HERA allows the FHFA to authorize a loan servicer to act on its behalf by contracting with the loan servicer or relying on the regulated entity's contractual relationship with a loan servicer, such that the contractually authorized loan servicer has standing to take action to protect the FHFA's interests. It thus follows that, when the contractually authorized loan servicer brings an action to protect the FHFA's interests as conservator of a regulated entity, the same statute of limitations would apply as if the FHFA had brought the action itself.

See 475 P.3d 52, 55 (Nev. 2020) (en banc) (internal citations omitted).

Second, Ms. Staab argues that a three-year statute of limitations applies because the amended claims are "more analogous to [a] tort claim than a contract claim." *Id.* But as *M&T Bank* and *Chase* already held, on virtually identical facts, that the contract prong's six-year period applies to claims implicating HERA's application to disputes about the effect of super-priority lien foreclosures on properties subject to an FHFA conservatorship estate's lien. 963 F.3d at 858-59; 475 P.3d at 56-57. Here, as in *M&T Bank* and *Chase*, the claims are more contract-like than tort-like. Counts 2-4 are "entirely dependent upon [Fannie Mae's] lien on the Property, an interest created by contract," and Wells Fargo did not "seek damages or claim a breach of duty resulting in injury to person or property, two of the traditional hallmarks of a torts action." *See* 963 F.3d at 858 (quotations omitted). "[E]ven if the question were closer," the six-year period should still apply, because federal policy mandates that "[w]hen choosing between multiple potentially-applicable statutes," the longer should apply. *Id.* (quotations omitted). Thus, Wells Fargo "had at least six years to bring [its] claims after the [condo] foreclosure sale." *Id.* at 859. The amended claims were plead before September 10, 2019, and are thus timely under federal law.

Finally, the applicable statute of limitations period under HERA is extended by the longer applicable period under D.C. law. HERA states that the applicable period is "the longer of" the statutorily-prescribed period (six years for contract

claims or three years for tort claims) or "the period applicable under State law." 12 U.S.C. § 4617(b)(12)(A). Here, the applicable D.C. law period is longer than the statutorily-prescribed period, as described in the next section. As a result, 12 U.S.C. § 4617(b)(12)(A) adopts the longer D.C. law period as the applicable period for HERA claims. Accordingly, the amended claims are timely under federal law for this additional reason.

B. The Claims Are Timely under D.C. Law

Regardless of HERA, Wells Fargo's claims would be timely under D.C. law, for at least three reasons. First, relation back applies to the amended claims. An amendment "relates back to the date of the original pleading when … [it] asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Super. Ct. Civ. R. 15(c)(1)(B). It applies where "the initial complaint put the defendant on notice that a certain range of matters was in controversy and the amended complaint falls within that range." *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 556 (D.C. 2001) (quotations omitted).

Here, the amended claims arise out of the same transaction or occurrence: the Condo Sale. The original Complaint asserted a "judicial foreclosure" claim against Mr. Sutcliffe as well as the Condo Sale purchaser, Ms. Staab, (*see* JA034-38), attached the deed from the Condo Sale, (*see* JA042), alleged that Ms. Staab holds

title "by virtue of" the Condo Sale, (*see* JA031-32), and sought a judgment that the "Property is to be sold to satisfy [Wells Fargo's] Deed of Trust." (*See* JA038). And Ms. Staab's Answer asserted that "any interest [Wells Fargo] may have had in the Property was extinguished by the [Condo] [S]ale[,]" (*see* JA103), thereby confirming that the original Complaint placed the Condo Sale's effect on the Deed of Trust in the "range of matters in controversy." *See Wagner*, 768 A.2d at 556 (quotations omitted).

In response, Ms. Staab argues that "because the original Complaint simply asked for foreclosure based on a mortgage default, and failed to allege any wrongful conduct with the foreclosure sale or claim invalidity of the sale," relation back cannot apply. *See* Mot. 19-20. But this too-narrow interpretation of the "conduct, transaction, or occurrence" is unsupported by, and inconsistent with, prior decisions. For example, in *Wagner*, the Court of Appeals held that an informed-consent amendment related back to the original negligent surgery allegations, although it "change[d] the legal theory," because "the factual situation upon which the actions depend[ed] remain[ed] the same and [was] brought to defendant's attention by the original pleading." 768 A.2d at 556-57. Here, the amendment relates back because it arises from the same conduct, transaction, or occurrence (the Condo Sale) and asks the same question (the effect, if any, of the Condo Sale on the first Deed of Trust).

Second, even if a three-year period applied and the amended claims did not

relate back, accrual did not occur until *Liu* was issued. Claims accrue "from the moment a party has either actual notice … or is deemed to be on inquiry notice." *Medhin v. Hailu*, 26 A.3d 307, 310 (D.C. 2011). The *Liu* decision on March 1, 2018 was the earliest moment that Wells Fargo could have known that the Deed of Trust was supposedly extinguished under D.C. law. *See* 179 A.3d at 874 (holding, as a matter of law and despite a "subject to" clause, that a COA "could not foreclose on its super-priority lien while leaving the property subject to the unsatisfied balance of the first mortgage or first deed of trust.").

In response, Ms. Staab argues that the amended claims should accrue on "the date of the foreclosure notice." *See* Mot. at 19. But before *Liu* was issued, there was no reason to believe that an acquirer *would not* take title subject to the Deed of Trust. (JA176-77) (advertising that the Property would "be sold subject to any other superior liens, encumbrances, real estate taxes and municipal assessments[.]"); (JA179) (affirming that the Property was "subject to first trust from 2006 in original amount of $193,000"); (JA238-39) (conveying title "subject to the First Deed of Trust"). The amended claims were pled before March 1, 2021, and are thus timely.

Third, regardless of the above, the amended claims are timely under other categories. A 15-year limitations period governs actions to recover real-property rights. D.C. Code § 12-301(1). Three cases are instructive here.

In *Nationstar Mortgage v. Berg*, the Superior Court applied the 15-year period

to a claim substantively-identical to the one at issue here—one which sought "declaratory judgment" to void a foreclosure sale held in violation of the Federal Foreclosure Bar and to preserve Freddie Mac's deed of trust from extinguishment—holding that it "appear[ed] to be timely under D.C.'s statutory period for claims involving real property rights. D.C. Code §12-301(1)." *See* No. 2015-CA-002471-R(RP), 2023 D.C. Super. LEXIS 20, at *3-4 (D.C. Super. Ct. Jun. 21, 2023).

In *Fannie Mae v. Alvin Gross Development, LLC*, the Superior Court also applied the 15-year period to an analogous action for judicial foreclosure for mortgage payments under D.C. Code § 42-816 brought by the noteholder and beneficiary of a senior deed of trust against a subsequent purchaser who bought title "subject to" the senior deed of trust. *See* No. 2016-CA-003956-R(RP), 2017 D.C. Super. LEXIS 83 (D.C. Super. Ct. Dec. 11, 2017). The Superior Court ultimately determined that "[t]here is no specific statute of limitations on the foreclosure or redemption of a mortgage in the District of Columbia, but the limitation applicable to the recovery of land is applied. This is fifteen years." *Id.*; *see Davis v. Stone*, 236 F. Supp. 553, 557 (D.D.C. 1964) (same). Here, like the plaintiff in *Alvin Gross*, Wells Fargo has brought an action for judicial foreclosure against a subsequent purchaser who bought title "subject to" the senior deed of trust, and accordingly, the 15-year period "applicable to the recovery of land" should be applied. *Id.*

Finally, in *Lancaster v. Fox*, the federal district court in D.C. applied the 15-

year period to a claim by a putative investor who sought to quiet title and obtain a declaratory judgment against the purchaser of loan secured by a senior mortgage, as well as the loan servicer. *See* 72 F. Supp. 3d 319, 235 (D.D.C. 2014). The federal district court explained the applicability of the 15-year period by stating that "[the plaintiff] sues to quiet title, an action that, at least in part, seeks 'the recovery of lands.' Were he successful in voiding the deeds of trust, he would thereby recover rights to the underlying property." *Id.* The situation here is similar to *Lancaster*, as Wells Fargo brought a quiet title action seeking to recover rights to the underlying property, in part by voiding the COA Sale conducted in violation of HERA, and accordingly, the 15-year period should apply. *Id.*

Additionally, a 12-year period governs actions on instruments under seal. D.C. Code § 12-301(6). Here, the Note (*see* JA141), Deed of Trust (*see* JA156), Memorandum of Purchase by Ms. Staab (*see* JA179) and the Deed to Ms. Staab (*see* JA136) are all sealed instruments relating to the Property. Accordingly, Section 12-301(6) applies. *See Lancaster*, 72 F. Supp. 3d at 325 (holding that D.C. Code § 12-301(6) may apply to a quiet title and declaratory judgment claim where "at least some of the deeds that form the basis of this suit are instruments under seal."); *In re Hardy*, No. 16-00280, 2018 WL 1352674, at *2 (Bankr. D.D.C. Mar. 13, 2018); *Burgess v. Square 3324 Hampshire Gardens Apts., Inc.*, 691 A.2d 1153, 1156-57 (D.C. 1997). Ms. Staab argues nothing to the contrary.

III. The Superior Court Correctly Held that the COA Was Not Indispensable

Finally, Ms. Staab argues that the Superior Court erred in holding that the COA was not an indispensable party to the claims added by the amendment. *See* Mot. at 21-22. The Court of Appeals reviews the issue de novo, construing the record in the light most favorable to Wells Fargo. *See Saucier*, 64 A.3d at 437.

Under Super. Ct. Civ. R. 19(a)(1), a person "must be joined" if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

As discussed below, the COA does not meet any of those criteria. Indeed, in closely analogous cases, the Superior Court has repeatedly held that COAs are *not* indispensable parties. The reasoning of those decisions—the reasoning the Superior Court adopted here—is correct.

A. Complete Relief May Be Accorded Among Existing Parties

The COA is unnecessary because the Court of Appeals can accord complete relief among existing parties by affirming the Superior Court's order declaring Ms. Staab's claim to title void and the Deed of Trust a valid encumbrance upon title, and Ms. Staab remains free to pursue a separate action against the COA without Wells Fargo. The Court of Appeals need not entertain the COA as party or adjudicate the

COA's rights to effectuate relief as between Wells Fargo and Ms. Staab.

In the summary judgment decision on appeal, the Superior Court agreed with Wells Fargo on this point, based on its finding that "nothing bars [Ms.] Staab from bringing a separate action against the [COA]." (*See* JA511).

In closely analogous cases, the Superior Court has consistently held that COAs need not be joined before a COA sale can be voided under HERA. For example, in *Reverse Mortgage Solutions, Inc. v. Moore*, a judicial foreclosure action, Fannie Mae's servicer moved for summary judgment against a foreclosure sale purchaser, arguing (as here) that the sale was void *ab initio* under HERA because FHFA did not consent to it. *See* 2023 WL 3975088 at *1-2 (D.C. Super. June 7, 2023). In response, the purchaser argued that the condominium owner's association was indispensable because it conducted the sale, and that the sale could not be invalidated without first joining it. *Id.* at *6. Judge Carl Ross dismissed the purchaser's argument as "without merit" and granted summary judgment for Fannie Mae's servicer. *Id.* Judge Ross agreed with the legal analysis in the summary judgment decision currently on appeal, and, in *Moore*, determined that "the Court can accord complete relief between [servicer] and [purchaser][.]" *Id.*

Moore is no black swan. In *Federal Nat. Mortg. Ass'n v. Billups*, a D.C. case in which Fannie Mae sought to quiet title, Judge Shana Matini adopted the reasoning of *Moore* and the summary judgment decision currently on appeal, and held that "the

Court can accord complete relief between Fannie Mae and [the purchaser]." No. 2015 CA 001764 R(RP), 2023 WL 6003527, at *5 (D.C. Super. Ct. Sep. 13, 2023). As the *Billups* court explained, "[w]hile [the condo association] initially purchased the [property] at the [foreclosure sale] and [the purchaser] purchased the [property] at [a subsequent sale], Fannie Mae's deed of trust can be reinstated without implicating the rights of [the purchaser] vis-à-vis Fannie Mae." *Id.*

Here, the parties are situated in substantially identical positions as those in *Moore* and *Billups*. The consistent rulings demonstrate that the COA's presence is immaterial to according complete relief between Wells Fargo and Ms. Staab.

In response, Ms. Staab argues that "[t]he deed to Ms. Staab came from the [COA], and the [COA] would be required to return the sale price paid for the Property if the sale were invalidated." Mot. at 21-22. But this is an issue for Ms. Staab to resolve in a future action against the COA relating to the Memorandum of Purchase governing the Condo Sale. As discussed further below, Wells Fargo is not a party to the Memorandum of Purchase, and accordingly, there is no reason to involve Wells Fargo in that future action. *See supra* § III(B).

Moreover, Wells Fargo seeks to quiet title under the Federal Foreclosure Bar, a federal law that renders the COA Sale void *ab initio* and preserves the Deed of Trust from extinguishment, and such relief would not implicate any reciprocal rights or duties of the COA. Because it was rendered void *ab initio*, the COA Sale

transaction lacks legal effect and is treated as if it never occurred; thus, there is nothing to unwind. *See Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 432, 118 S. Ct. 838, 844 (1998) ("That the contract is voidable rather than void may prove important. For example, an absolutely void contract, it is said, 'is void *as to everybody whose rights would be affected by it if valid*.'") (quoting 17A Am.Jur.2d, Contracts § 7, p. 31 (1991)) (emphasis added); *Chen v. Bell-Smith*, 768 F. Supp. 2d 121, 134-35 (D.D.C. 2011) ("This distinction is significant for purposes of determining the rights of bona fide purchasers, for while a voidable deed is unassailable in the hands of a bona fide purchaser, *the protections afforded to bona fide purchasers do not apply to deeds that are void*.") (quotations omitted) (emphasis added). Thus, complete relief may be accorded between Wells Fargo and Ms. Staab, without involving the COA.

B. The COA Is Not Impaired or Impeded in Protecting Its Interests

The COA's absence will not "impair or impede" the COA's ability to protect its own interests. Should Ms. Staab bring a future action against the COA relating to the Memorandum of Purchase governing the Condo Sale—for which Wells Fargo is a non-party and need not be involved—the COA could adequately and most appropriately protect its own interests by arguing, for instance, that no contract was breached, that no fraud occurred, and that nothing was negligently misrepresented.

In response, Ms. Staab merely argues that "[c]ases which seek to undo or

rescind a transaction must join all necessary parties to the suit." Mot. at 21 (citing *Young v. Swafford*, 102 A.2d 312, 313-14 (D.C. 1954) and *Ward v. Deavers*, 203 F.2d 72, 75 (D.C. Cir. 1953)). But in *Young* and *Ward*, the purchaser, seller, and broker were all parties to the contracts at issue. Thus, the cases more accurately stand for the unremarkable proposition that "where rights sued upon arise from a contract, all parties to it must be joined in the suit." *Young*, 102 A.2d at 313. Moreover, *Young* and *Ward* are inapposite—Wells Fargo is not a party to the Memorandum of Purchase. Ms. Staab also argues that "a holder of an interest in real property is indispensable when a judgment could destroy or substantially impair the interest at issue." Mot. at 21-22 (citing *EMC Mortg. Corp. v. Patton*, 64 A.3d 182, 188 (D.C. 2013)). But that case too, is inapposite—the COA has no interest in the Property that would be destroyed or substantially impaired.

In the summary judgment decision on appeal, the Superior Court agreed with Wells Fargo on this point, rejected Ms. Staab's reliance upon *Young*, *Ward*, and *EMC*, and found that: (1) the COA "was a party to this lawsuit and has clear notice of how its rights might be affected by the Court's disposition of this case," (2) the COA "was added as a party to this case by the Amended Complaint, which raised the Federal Foreclosure Bar claims at issue here," (3) the COA "had the opportunity to contest [Wells Fargo's] federal preemption claim in its Motion to Dismiss" in 2019, and (4) the COA "could have re-joined this case within the past three years if

it feared that its interests would be prejudiced by its absence." (*See* JA511).

The Superior Court has consistently held that the entity that conducted the foreclosure sale is not an indispensable party. The *Moore* court explained that "the [condo association] is not an indispensable party under [Rule 19]. Nothing bars [purchaser] from bringing a separate action against the [condo association]. Thus, this Court finds that the [condo association] is not an indispensable party under Rule 19 and the foreclosure sale can be invalidated." 2023 WL 3975088 at *6. And the *Billups* court explained that "to the extent that [the purchaser] seeks a return of the sale price it paid for the Property, [the purchaser] can pursue its separate claims against [the condo association]," so "the Court does not require that [the condo association] be a party to reach the merits of the case." 2023 WL 6003527, at *5. On appeal, Ms. Staab argues nothing persuasive to the contrary.

C. The Existing Parties Face No Risk of Inconsistent Obligations

The COA's absence threatens no risk of inconsistent obligations. Whether Ms. Staab's claim to title is void and whether the Deed of Trust remains a valid encumbrance is a matter that can *only* be determined as between Wells Fargo and Ms. Staab. Yet Ms. Staab fails to explain how Wells Fargo's requested relief would subject Wells Fargo or Ms. Staab to inconsistent obligations unless the COA were first joined. Ultimately, the COA Sale transaction is a legal nullity and it cannot be the basis for inconsistencies between any party. *See Oubre*, 522 U.S. at 432; *Chen*,

768 F. Supp. 2d at 134-35. Ms. Staab argues nothing to the contrary.

D. Dismissal Is Not Required

Even if the Court of Appeals were to find—contrary to the Superior Court's prior decisions in *Moore* and *Billups*—that the COA is indispensable, dismissal is neither required nor proper. *See* 2023 WL 3975088 at *6; 2023 WL 6003527, at *5. Nothing prevents the COA from being joined now, since the COA was dismissed "without prejudice." (*See* JA297). And Rule 19(b) shows that dismissal is inappropriate here. Ms. Staab argues nothing to the contrary.

As to "the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties," and "the extent to which any prejudice could be lessened or avoided," *see* Super. Ct. Civ. R. 19(b)(1)-(2), any prejudice Ms. Staab envisions may arise to herself or to the COA can be lessened or avoided through a future action between Ms. Staab and the COA relating to the Memorandum of Purchase governing the Condo Sale.

As to "whether a judgment rendered in the person's absence would be adequate," *see* Super. Ct. Civ. R. 19(b)(3), the Superior Court judgment was adequate because it accorded complete relief by declaring Ms. Staab's claim to title void *ab initio* because federal law precludes the COA Sale, and by declaring the Deed of Trust a valid encumbrance upon title because federal law precludes the COA's lien and sale to Ms. Staab.

Finally, as to "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder," *see* Super. Ct. Civ. R. 19(b)(4), the answer is no. The Property is secured collateral that is federally protected from the COA Sale and any other dissipation, and the harms to Fannie Mae's conservatorship estate are at the forefront of Congress' clear mandate under 12 U.S.C. § 4617(j)(3) that neither the COA Sale nor the COA's lien can extinguish or impair conservatorship interests.

CONCLUSION

For the reasons stated above, Wells Fargo respectfully requests that the Court of Appeals affirm the Superior Court's rulings, enter judgment in favor of Wells Fargo, and dismiss the appeal.

Dated: February 28, 2024

Respectfully submitted,

/s/ Daniel Z. Herbst

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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/ Daniel Z. Herbst
Signature

23-CV-492 & 23-CV-669
Case Number(s)

Daniel Z. Herbst
Name

February 28, 2024
Date

DHerbst@ReedSmith.com
Email Address

CERTIFICATE OF SERVICE

I certify that on February 28, 2024, a true and correct copy of the foregoing was served on all counsel of record through the electronic filing system of the District of Columbia Court of Appeals.

Dated: February 28, 2024

/s/ Daniel Z. Herbst
Daniel Z. Herbst