

Nos. 23-CV-832 & 24-CV-45

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IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

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PETER FARINA,  
APPELLANT,  
v.

JANET KEENAN HOUSING CORPORATION, *et al.*,  
APPELLEES.

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PETER FARINA  
APPELLANT,  
v.

JANET KEENAN HOUSING CORPORATION,  
APPELLEE.

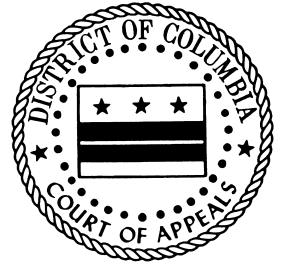
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ON APPEAL FROM ORDERS OF THE  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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**BRIEF OF APPELLEE**  
**JANET KEENAN HOUSING CORPORATION**

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Stephen O. Hessler, Esq. #230102  
Offit Kurman, P.A.  
1325 G Street NW, Suite 500  
Washington, DC 20005  
Phone: (202) 296-3171  
Fax: (202) 393-2104  
shessler@offitkurman.com  
*Counsel for Appellee Janet Keenan  
Housing Corporation*

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**Statement Of Parties And Counsel**  
**Pursuant To Appeals Rule 28(a)(2)**

In the proceedings below before the Trial Court, and before this Court, the parties and their counsel whom appeared are as follows:

Peter Farina  
Purported Invervenor and Plaintiff  
*Pro se*

Janet Keenan Housing Corporation  
(a private non-profit corporation)  
Counsel: Stephen O. Hessler, Esq.

District of Columbia  
Office of the Attorney General  
Before the Trial Court and on appeal

Respectfully submitted,

/s/ Stephen O. Hessler  
Stephen O. Hessler, Esq. #230102  
Counsel for Janet Keenan Housing  
Corporation

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## Statement Of The Issues

- I. Whether The Trial Court Properly Approved As A Consent Order The District's And JKHC Agreement By Which JKHC Could Sell Its Sole Remaining Asset And Wind Down Its Affairs As A Non-Profit Corporation, Over The Objections Of Non-Party Purported Intervenor Appellant, Pursuant To Proper Application Of The Cy Pres Doctrine?**
  
- II. Whether The Trial Court, After Trial On The Merits, Entered Judgment In Favor Of JKHC On Appellant's TOPA Claim Where A Court-Ordered Settlement Agreement Operated As A Matter Of Law To Preclude Such TOPA Claim**

### **Statement of the Case**

The proceedings below and the issues before this Court involve the claims of an occupant (Appellant, “Farina”) to abort or delay the orderly wind down of a D.C. non-profit corporation (Appellee, hereafter “JKHC”) for his own purposes. Farina seeks appellate review of Trial Court Orders which, pursuant to the Cy Pres doctrine, permitted JKHC to wind down its affairs in an effort to preserve affordable housing according to its governing documents, and in an effort to avoid insolvency and foreclosure. The residential housing accommodation at issue in this case (1304 Euclid Street NW hereafter “the Property”) had been purchased by JKHC in 2000 and is the sole and principal asset of JKHC.

Immediately upon its acquisition of title to the Property with Farina in place, JKHC entered into a Memorandum Of Understanding (“MOU”) (Trial Exhibit D #2) which set forth the manner in which the self-governing group home, supervised by Farina, was to operate. Farina was designated as “Head Of Household” and he was charged with certain maintenance and other responsibilities for the benefit of the household itself. Farina was not a named party to the MOU but the other party thereto was the occupant of the Property (“Household”) and is “Victor Howell House” which is an unincorporated association of individual occupants at the Property including Farina. Among Farina’s obligations at the Property as Head Of Household was to “maintain the property/building in a safe and sanitary condition”, handle routine maintenance items, proceed with emergency repairs,

and report to JKHC on his activities. The Memorandum Of Understanding was terminable by JKHC, as was Farina's role as Head Of Household.

As the years went by under Farina's stewardship of the Property as Head Of Household, the condition of the property deteriorated, the cash flow supervised by Farina for the running of the "household" was insufficient to maintain the Property, the meager income collected by Farina as "rents" paid by the occupants at the Property for fair use and occupancy diminished, and the financial condition of JKHC worsened to the point of insolvency. After significant, specific, and repeated efforts by the Board of JKHC to find suitable alternatives in the non-profit housing industry to transfer the Property, the Board decided to put the Property for sale on the open market in or about September 2022. In that month JKHC, through its real estate professional, issued to Farina and others at the Property a standard form "Notice To Tenant Of Landlord's Receipt Or Solicitation Of An Offer To Sell The Single Family Accommodation And Notice Of Intent To Sell" (Plaintiff Trial Exhibit H) in which Farina was notified in compliance with D.C. Code §42-3404.09(b). The efforts of JKHC to operate and maintain the Property and specification of Farina's role within it, are set forth in the "Declaration Of Peter Farina" attached to the underlying Complaint filed herein and executed as of October 3, 2022. As of September 2022 JKHC had exhausted its efforts to maintain or transfer the Property to another non-profit, advised Farina, and others at the Property of the impending sale, and engaged a real estate professional. JKHC advised Farina that if a sale were consummated the proceeds of the sale (net) would be devoted to housing programs.

Based in part upon the Farina Declaration, the District of Columbia filed suit against JKHC pursuant to the Nonprofit Corporation Act seeking relief pursuant to the Cy Pres doctrine included therein. Shortly after the Complaint was served, the Trial Court entered an Order staying all sales, marketing and other activity with respect to the Property or its disposition, pending resolution of the merits of the District's Complaint. As of the filing of the District's Complaint herein (the "Cy Pres litigation") JKHC had, and has to this day, a valid binding good faith and valuable third-party contract for the sale of the Property.

After almost a year of intense and good faith and detailed negotiation, the District and JKHC arrived at a Settlement Agreement which, among other things, provided for the sale of the Property, distribution of proceeds of sale thereafter to another affordable housing non-profit corporation (VOACC) and provided for the dissolution of JKHC. The uncontested basis for the District's and JKHC agreement to liquidate the Property and transfer net proceeds to another non-profit, was the fact that continued ownership and management of the Property by JKHC was untenable, and that JKHC is virtually insolvent. The Settlement Agreement was a carefully crafted Consent Order which permitted JKHC to wind up its affairs and sell the Property, comply with the Cy Pres doctrine and other provisions of the D.C. Nonprofit Corporation Act, but did not require any of the current occupants at the Property or Farina to move. On September 29, 2023 the Court, on the record, reviewed the terms and conditions of the Consent Order, solicited input and information from the District and JKHC, and heard from Farina on the record. At the time of the September 29, 2023 proceeding, Farina had moved the Court for leave to intervene



as an interested party, which Motion had been denied by the Court on August 24, 2023. Nevertheless Farina was permitted to participate at the approval hearing on September 29.

The transcript of proceedings before the Trial Court on September 29, 2023, by which the Court, pursuant to the Cy Pres doctrine approved the parties' Settlement Agreement, is included in its entirety in the record. For purposes of this Statement the record is clear that the Trial Court conducted an in-depth, detailed, relevant, and wise inquiry into the details, background, basis, and implementation of the Settlement Agreement. The Court, for instance, confirmed with the District that the written agreement between JKHC and VOACC has been reviewed by the District (yes). The Court inquired, and was assured by the District that, after the sale “. . . any remaining funds will be dedicated to affordable housing programming in the District of Columbia as opposed to the greater Chesapeake area?” (yes). Turning to JKHC, the Court inquired of the key terms which would underpin the findings that the Court must make pursuant to the Cy Pres doctrine. The Trial Court was advised that all net proceeds of sale were going to VOACC and not to any individual nor was there any diversion of proceeds. The Court was advised that the existing occupants at the Property could “opt in” or “opt out” of a residency program for other housing opportunities in the District. Finally JKHC advised the Court that the residents had been advised by Housing Counseling Services, that the purpose of the funds “is being protected”, and that the Court was invited to interview JKHC Board members if necessary. The Court was assured that any tenants who “opt out” of the VOACC Housing Assistance or programming could remain at the Property after the sale. Furthermore, the Court inquired of the District:

“. . . is there anything in the Janet Keenan Housing Corporation’s mission that specifically was tied to the 1304 Euclid Street NW property? In other words was the mission statement that it would provide low-income housing at that particular property or was it a broader mission statement that they were committed to providing low-income housing opportunities more broadly to District of Columbia residents” (Tr. at p. 14).

In response to the Court’s question the District confirmed that understanding that the mission of JKHC was broader and was to provide affordable housing in the District. The District confirmed that that “. . . I do believe that the first language that you used is almost the direct quote of their mission, so it’s the broader language and not necessarily tied to that property” (Id., Tr. at pp. 14-15).

The record confirms the Trial Court’s Findings of Fact and Conclusions, and ultimate compliance with the Cy Pres doctrine, in its approval of the District and JKHC Consent Agreement. The Trial Court found that the Agreement, by which net proceeds would be paid over to VOACC, would be similarly devoted to promoting affordable housing in the District and that the commission of proceeds of sale by JKHC would be an appropriate disposition of the net assets after the sale of the charitable asset. The direction of net proceeds of sale to VOACC would indeed promote affordable housing. The Court further found that the remaining residents at the Property could be afforded comparable housing opportunities. The Court further announced that the terms of the Agreement “. . . are consistent with the doctrine of Cy Pres in the disposal of non-profit assets and dissolution of non-profit organizations pursuant to D.C. Code §29-410 (Id. at p. 17).

But the Trial Court, in the presence of Farina, noted further that it appeared that Farina’s intention is to

“. . . seek to intervene in order to stop the sale of the Property at 1304 Euclid Street NW. And in this case, unfortunately, that is just not a feasible alternative, given that the Janet Keenan Housing Corporation is financially and operationally otherwise unable to maintain the Property, and that in marketing the Property, that the purchaser was – been identified by the Defendant – is not a non-profit corporation” (Id. at Tr. 17-18).

The Trial Court also found that implementation of the Settlement Agreement was actually likely to create a greater “positive impact on providing low-income housing opportunities” (Id. at p. 18) and certainly for the remaining residents at the Property.

Promptly thereafter Farina filed his second action (“the TOPA action”) in which he repeated many of the same claims he sought to assert in his failed intervention request, and in addition sought to invoke certain TOPA rights to match the current contract price for the Property. Farina also sought to enforce alleged breaches of the Uniform Trust Code in his second case. Farina also sought an immediate stay of the sale of the Property pending further Court approval, an immediate imposition of a receivership for the Property for needed repairs, a declaration that JKHC was subject to the Uniform Trust Code and common law, \$2 million in damages, and “any relief the Court finds necessary to preserve the house affordability”. Furthermore, in his TOPA Complaint, Farina sought to empower himself by declaring a “derivative proceeding” pursuant to the Nonprofit Corporation Act, imposed upon himself a contorted definition as “Plaintiff”, and repeated his assertions that he had previously made in the Cy Pres action and his Motion To Intervene by claiming that he has fulfilled a “demand requirement” of D.C. Code §29-411.03 and that therefore he should be able to reinvigorate his previously dismissed claims in the Cy Pres litigation (dismissed, as in the form of the Court’s denial of his Motion To Intervene).

Subsequent to the Court's grant and approval of the Consent Agreement in the Cy Pres litigation, and in connection with the TOPA Complaint by Farina, the Court conducted evidentiary proceedings on all of Farina's issues on four dates concluding on December 13, 2023. During the course of those proceedings, the Trial Court, on or about November 7, 2023, denied Farina's Motion for a Temporary Restraining Order in the TOPA case. On or about December 13, 2023, the Court granted JKHC Motion For Judgment on Farina's claim for a receivership. Shortly thereafter the Court granted the Motion by JKHC to consolidate all remaining matters for evidentiary hearing and the Court set a final hearing on January 11, 2024. The transcript of those proceedings are included in the record and incorporated herein by reference ("Jan. Tr. at").

Although this Court certainly has available to it the full transcript of proceedings before the Trial Court on January 11, 2024, the nature of the case requires that certain findings by the Trial Court be emphasized, as set forth in the transcript itself. The Trial Court, obviously, and as evidenced clearly by the transcript, did specifically and in relevant fashion make determinations of fact to support its Conclusions of Law. The Trial Court found (Jan. Tr. at p. 4) that "Mr. Farina lacks standing either under the Uniform Trust Code or under the Nonprofit Corporation Act to challenge either the sale of the Property or the distribution of assets pursuant to the terms of the Court-approved Settlement Agreement. .". The Court further found ". . . he is not a creator. He is not a co-creator, incorporator, settlor, trustee or current Board member of the organization nor does he have a possessory interest in the property as those terms are understood under either the Uniform Trust Code or the Nonprofit Corporation Act" (Jan. Tr. at pp. 4-5). The Court further found that ". . .

Mr. Farina is neither an intended or present beneficiary” (Jan. Tr. at p. 6). Furthermore “. . . nothing in the Janet Keenan Housing Corporation Articles of Incorporation tie the mission of the organization to 1304 Euclid Street NW or to the Victor Howell House. Instead the non-profit was incorporated with a broader mission to preserve and promote affordable housing in the District of Columbia according to paragraph 3 of its Articles of Incorporation” (Jan. Tr. at p. 7).

Further to concrete and realistic matters at hand, the Court found:

“. . . the evidence that has emerged during the course of this litigation has clearly established that Janet Keenan Housing Corporation had no reasonable or feasible alternative”. \* \* \* “. . . Janet Keenan Housing Corporation is financially unable to continue operations or maintain the property and, in fact, is facing likely imminent foreclosure. Janet Keenan Housing Corporation is financially insolvent” (Jan. Tr. at p. 9).

Furthermore, and consistent with the Cy Pres doctrine and organization and review of handling of charitable assets, the Trial Court found that the Settlement Agreement as crafted by D.C. and JKHC was consistent with the explicit provisions of the Articles of Incorporation. The Trial Court, from the bench, read from the Articles of Incorporation which describe that “. . . in the event that the corporation dissolves or forfeits its charter the Board of Directors shall after paying or making adequate provision for the payment of all liabilities and obligations of the corporation distribute such assets to an organization exempt from taxation under Sections 501(c)(3) of the Code.” (Jan. Tr. at pp. 9-10).

The Court likewise reviewed, analyzed, and disposed of Farina’s TOPA claims on the facts of this case. The Court reviewed the sale process (Jan. Tr. at pp. 10-12) and found that although JKHC initially recognized its obligation to provide Farina with a notice of its

intent to sell, the District's Cy Pres litigation was filed a mere four days later and thus the sale process was subject to an immediate stay. Accordingly the Court found that as a matter of fact the Court stay of proceedings operated to excuse JKHC obligation under TOPA to send to Farina any "Offer Of Sale" due to the pendency of the litigation itself. Therefore, and as a consequence, and given the "smooth transition for the current occupants of the property" contained within the Agreement (Jan. Tr. at p. 13), the Court found that D.C. Code §42-3404.02(c)(2)(M) explicitly exempts a transfer of property pursuant to court order . . ." (Id.). Applying the facts of this case to the Cy Pres doctrine and TOPA, the Court found as a matter of law that Mr. Farina's TOPA rights were extinguished at the time this Court approved the Consent Settlement Agreement (Jan. Tr. at p. 15) and for that reason Judgment was entered by the Court in favor of JKHC.

The relief which Farina seeks from this Court on appeal really has nothing to do with his legitimate claims about or arguments concerning the District's, JKHC, or the Trial Court's compliance with the Cy Pres doctrine or TOPA. It has everything to do with Farina's desire to maintain the status quo of Victor Howell House as a "self-run" affordable housing entity, with himself as Head Of Household and unregistered sublandlord. These objectives are evident in Farina's Brief (Farina Brief at p. 11) in which he confirms that he came to Court seeking to preserve the Property as affordable housing either "for himself" and, specifically, ". . . by acquiring the house himself" (Id.). In order to fulfill his desired prophecy, Farina has now cast himself on appeal as somehow entitled to rights as "Head Of Household" or as an effective "trustee" of the Property itself (Farina Brief at p. 17). And, significantly, in his Brief (at p. 35 "Prayer For Relief") Farina asks that this Court

reverse the Trial Court Orders so that he may “. . . continue his 35-year effort to preserve and provide desperately needed affordable housing at Victor Howell House”. Emphasis on the word “he” which by no stretch of the imagination involves his becoming a non-profit entity of any sort, nor anything other than a continuation of the self-run unincorporated Association. The alleged (but irrelevant) affirmation by Farina of his intent is Farina’s repeated inclusion in this record of the “Independent Broker” letter bearing date December 10, 2023 (“Exhibit 1 to Appellant’s Opposition To Appellee JKHC Motion For Expedited Review”). Farina apparently intends to obtain a money partner for the purchase of the Property himself in purported exercise of his TOPA rights. Meanwhile, as this appeal proceeds, and as represented by JKHC in its filings to this Court, the original term of the National Capital Bank First Trust Loan expired as of May 20, 2024. That loan term was extended through August 20, 2024 and has likewise expired. As of this writing the First Trust Loan by National Capital Bank has not been extended, the loan is in default, and JKHC faces foreclosure. Accordingly, and under all of the circumstances, legal, equitable, factual, and actual, JKHC respectfully requests this Honorable Court, for the arguments which follow, to affirm in all respects the decisions of the Trial Court.

## Argument

### **I. Whether The Trial Court Properly Approved As A Consent Order The District's And JKHC Agreement By Which JKHC Could Sell Its Sole Remaining Asset And Wind Down Its Affairs As A Non-Profit Corporation, Over The Objections Of Non-Party Purported Intervenor Appellant, Pursuant To Proper Application Of The Cy Pres Doctrine?**

The narrow issue presented by Farina for appeal in the Cy Pres case is whether the Trial Court properly denied his filing which purported to be a “Motion To Intervene”. Without doubt the Trial Court, having considered the item “filed” by Farina, and the arguments of D.C. and JKHC in opposition thereto, properly applied the intervention rule and relevant authorities in denying that request of Farina to participate as an intervenor. Regardless of the fact that the document filed by Farina purported to claim it as a “Motion To Intervene”, its content was defective and fatal to Farina’s request for any number of reasons pursuant to SCR-Civ. 24(a) and (c). Under the Rule, Farina was required to identify some interest relating to the property that is the subject of the action and demonstrate that his situation is such that disposing of the action without his participation might impair or impede his ability to protect that interest, “unless existing parties adequately represent that interest”. Furthermore, Subsection (c) of the Rule states that “. . . A motion to intervene must be served on the parties as provided by Rule 5. The Motion must state the grounds for intervention and must be accompanied by a pleading that sets out the claim or defense for which intervention is sought”. As has been confirmed repeatedly both by the record itself and D.C. and JKHC, Farina did not file a pleading setting out a claim or defense. SCR-Civ. 8(a) and (b) set forth the general rules of pleading.



If Farina sought to intervene as a plaintiff with a claim for relief, he was required to set forth a short and plain statement of both grounds for the Court's jurisdiction, statement of his claim showing that he is entitled to relief, and a demand for the relief sought. If, on the other hand, he sought to intervene as a defendant (as, for instance, defending against the District's claims) he likewise was required to state in short and plain terms his defenses to each claim asserted against him. Longstanding and well recognized precedent confirm the application of this Rule to motions for intervention before the Court. Of the factors to be considered by the Trial Court with respect to an applicant for intervention, the Trial Court must consider the length of the intervenor's delay before filing his application, (measured by the time that the applicant actually knew or reasonably should have known of his interest in the main action); the reason for the delay; the state to which the litigation has progressed when intervention was sought; the prejudice that the original parties may suffer if the application to intervene is granted; the prejudice that the intervenor may suffer if his application is denied (Emmco Insurance v. White Motor Corp., 429 A.2d 1531 (D.C. 1981); Vale Properties Limited v. Canterbury Tales Inc., 431 A.2d 11 (D.C. 1981). Because Farina failed to file a pleading setting forth the nature of his interest, it was virtually impossible for the Court to apply all of the considerations surrounding an intervention request to Farina's "motion". Of the many arguments presented by JKHC and D.C., both to this Court and to the Trial Court in opposition to Farina's request to "intervene", it is or should be fatal to Farina's intervention request that he, himself, provided his "Declaration" to the District of Columbia in the first instance, pre-suit, and knew or should have known of the JKHC intention to sell the Property and wind down its

affairs. Likewise, inasmuch as D.C. is not and was not counsel to Farina, or Victor Howell House, to the extent that Farina or the household had any stake in the outcome or “interest” in the Property, it or he should have taken steps, independently, to intervene during the year of negotiations and pendency of the Cy Pres case, to protect their interests before the Court. But the Court did, indeed, apply the multi-part test of intervention to Farina’s presence in the case. The Court evaluated the factors of prejudice as they relate both to the District, JKHC, and the residents at the Property. The Court found that the parties to the litigation would be more prejudiced than Farina if his intervention “request” were granted (in the absence of a pleading nonetheless). The Court found that the delay factor of almost a year operated against the position of Farina and also would result in further prejudice to JKHC if intervention were granted and the proceedings were further delayed. Furthermore, a determination as to the timeliness of the application for intervention is left to the sound discretion of the Trial Court and such Judgment will not be disturbed upon review absent an abuse of discretion (Emmco, Id.).

Accordingly, and applying well recognized law to the matter of intervention by Farina before it, the Trial Court did not abuse its discretion in denying intervention to Farina under the circumstances for his substantial noncompliance with the Rule and failure to meet the legal tests which apply to it.

However, whether addressed in the context of resolution of the Cy Pres case, or the litigation involving the Farina TOPA case, the Trial Court did, on multiple occasions, receive and consider the various and sometimes confusing if not inconsistent arguments

presented by Farina to justify his “interest” in the Property, the Cy Pres litigation, and/or the disposition of the JKHC asset.

The Trial Court, in approving the Consent Settlement Agreement between JKHC and D.C., properly and completely complied with the Cy Pres doctrine (D.C. Code §29-410) and in analyzing Farina’s Opposition to it.

The Cy Pres doctrine is a rule of construction used to preserve testamentary charitable gifts that otherwise would fail. When it becomes impossible to carry out the charitable gift as the testator intended, the doctrine allows the next best use of the funds to satisfy the testator’s intent as near as possible (Democratic Central Committee of D.C. v. Washington Area Metropolitan Transit Authority, 84 F.3d 451, 455 n. 1 (D.C. Cir. 1996)).

In its application of the Cy Pres doctrine to the JKHC proposed disposition of its asset, the Court analyzed and disposed of Farina’s claims to “standing” in correct fashion. One attack by Farina was based upon the Nonprofit Corporation Act found at D.C. Code §29-401 et seq. The Court correctly found, as a matter of fact, that Farina did not occupy any position related to JKHC as an officer, director, or other person part of the corporate organization. By finding that Farina lacked standing under the Nonprofit Corporation Act, the Court implicitly found that he could not legally challenge the validity of the corporate act of JKHC in entering into the Settlement Agreement with D.C., nor could he maintain a derivative proceeding pursuant to D.C. Code §29-411.01. The Act provides at D.C. Code §29-403.04 that the validity of a corporate action cannot be challenged on the ground that the non-profit corporation lacks or lacked power to act except by a member, director or member of a designated body, by the corporation directly, or by “. . . the Attorney General for the District of Columbia under §29-412.20”.

Alternative grounds upon which Farina sought to delay or set aside the Settlement Agreement included arguments by him under the D.C. Uniform Trust Code (D.C. Code §19-1301 et seq.). By definition (§19-1301.02) the Code applies to “express trusts, charitable or non-charitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust”. As the Court observed, and as is evident from the record in this case including the Articles of Incorporation of JKHC, neither JKHC nor the Property is a trust or trust property. Nor can Farina fit within any of the definitions attendant to a uniform trust case. Farina is not a beneficiary under the UTC because he does not have a present or future beneficial interest in a trust; he is not a distributee because he is not a beneficiary who is currently entitled to receive a distribution from a trust; he has no interest as a beneficiary because there is no beneficial interest provided in the terms of a trust; he is not a qualified beneficiary because he is not a distributee under a trust, nor is he a settlor because he did not create or contribute property to a trust. Farina’s position, although repeated incessantly before the Trial Court and this Court, that he has some sort of interest in a trust, is belied by the fact that he was an initial and short-lived director of the Board of this non-profit corporation, is and was familiar with the Articles of Incorporation, and knows or should have known that JKHC and its business and Property have nothing to do with any sort of trust. Accordingly, any argument made by Farina pursuant to the UTC is misplaced and inappropriate.

Farina also sought to justify his participation in the wind down of JKHC corporate affairs by advancing arguments under the Nonprofit Corporation Act. Farina has relied, in varying contexts, upon Family Federation v. Moon, 129 A.3d 234 (D.C. 2015) as precedent

which supports his position. In his Brief (p. 13) Farina claims that he, as “Head Of Household” of Victor Howell House, acted as some sort of trustee and thus claims that in that role he had the power to form a corporation or other entity for carrying on the business or investment activities of a trust (citing to Family at p. 246). While Farina never made this argument to the Trial Court, it is clear that JKHC was never formed as a trust, Farina was, at best, a Board member of a non-profit corporation, and that soon after formation of JKHC he was dismissed from the Board and relegated to the position of Head Of Household. His role as Head Of Household was terminable, he had no ownership interest in JKHC or the Property, and thus cannot, by argument or pronouncement alone, transform the operations of and legal responsibilities of JKHC as anything other than that of a non-profit corporation.

Farina has similarly relied upon Hooker v. Eades, 579 A.2d 608 (D.C. App. 1990) as somehow supporting his position. As the facts of this case demonstrate, the mission of JKHC in its Articles of Incorporation was “broad” and not directed specifically at this Property. The Articles of Incorporation, as the Trial Court found and observed, permitted the corporation (pursuant to law) to sell its asset and wind up its affairs. The Trial Court specifically inquired of the District and JKHC at the Cy Pres approval hearing in September 2023 on this point, to confirm that, early on, the core principle of Hooker v. Eades did not apply to this asset or this non-profit corporation.

Accordingly, the differences between JKHC as a non-profit corporation, and the arguments advanced by Farina to characterize it as a trust, are further confirmed by this Court’s decision in In Re Estate of Reilly, 933 A.2d 830 (D.C. 2007). The Court, in Reilly,

confirmed that express trusts are created “. . . when the settlor manifests an intent to place trust property in the hands of the trustee for the benefit of another and the settlor must use written words to express her intentions if she wants the trustee to be bound” (Id. at 839).

Accordingly, whether performed in the context of the Court’s review and approval of the Settlement Agreement in the Farina Cy Pres litigation, or in connection with Farina’s TOPA case (which included, by reference and incorporation, all previous arguments not correctly made in the intervention request) the Court did, indeed, actually consider Farina’s multiple and sometimes inconsistent or baseless arguments by which he sought to delay or upset or avoid the consequences of the District’s and JKHC’s Settlement Agreement. The Court afforded ample opportunity to Farina in consolidated cases to present his arguments under the Nonprofit Corporation Act and the Uniform Trust Code. Indeed, the Trial Court did receive and evaluate Farina’s multiple claims under the Nonprofit Corporation Act and Uniform Trust Code and entered Judgment against him.

Thus the Court, in its review of and approval of the Settlement Agreement between D.C. and JKHC, did not commit error in its denial of Farina’s request to intervene, because ultimately he could not and did not establish standing to contest the action of JKHC, nor did he give up any sort of “interest” which would permit him otherwise (as a party independent from D.C. through its Attorney General) to attack the decision of JKHC to sell its single asset to a similar non-profit corporation, or the Trial Court’s agreement and Judgment Order permitting that to happen. Accordingly, with respect to whether the Trial Court properly approved as a Consent Order the District’s and JKHC’s Agreement to sell the Property to VOACC, the Trial Court did not commit clear error or an abuse of discretion

in the proceedings before it, and the Judgment of the Trial Court confirming the Settlement Agreement between the parties should be affirmed in all respects.

**II. Whether The Trial Court, After Trial On The Merits, Entered Judgment In Favor Of JKHC On Appellant’s TOPA Claim Where A Court-Ordered Settlement Agreement Operated As A Matter Of Law To Preclude Such TOPA Claim**

To the extent that Farina may have been disappointed by the Court’s decision in the Cy Pres litigation to deny him intervention, Farina’s claims relating to the Uniform Trust Act and/or the Nonprofit Corporation Act were actually litigated by the Trial Court as part of his second-filed TOPA Complaint. As the Trial Court stated in her Findings Of Fact and Conclusions Of Law (Jan. Tr. at p. 3):

“I also note that really for all intents and – and purposes since the filing of 2023-CAB-6168, from a practical perspective, the Court has treated that as consolidated with the underlying litigation in Case No. 2022-CAB-4492B which parties have been referring to as the “Cy Pres litigation”.”

Accordingly, in its review of Farina’s claim in the TOPA Complaint that he had several legally sufficient bases upon which to contest or avoid the JKHC transfer of property to VOACC pursuant to the Settlement Agreement, the Court, in fact, tried those issues and ultimately entered Judgment against Farina on all of them. Without repeating the arguments set forth in the previous section of this Brief, or further specific elaboration of the trial transcript of January 11, 2024 (included in the record herein), it is clear that the Trial Court carefully, specifically, and ultimately correctly reviewed Farina’s standing arguments with respect to his attack on the Court’s determination in the Cy Pres litigation and the JKHC corporate decision and need to transfer the Property to another non-profit organization (VOACC). The Court found (Jan. Tr. at p. 4) that Farina lacks standing under

either the Uniform Trust Code or the D.C. Nonprofit Corporation Act to “. . . challenge either the sale of the property or the distribution of assets pursuant to the terms of the court approved Settlement Agreement” (Jan. Tr. at p. 5). The Trial Court further found that Farina was not and is not a creator, co-creator, or any other status with standing as otherwise qualified by statute to make the claims, nor did he have a possessory interest in the Property “. . . as those terms are understood under either the Uniform Trust Code or the Nonprofit Corporation Act” (Id.). The Court repeated its previous finding that the Janet Keenan Housing Corporation Articles of Incorporation did not tie the mission of the organization to this or any specific property (Jan. Tr. at p. 7) and that Farina’s repeated reliance upon Family Federation v. Moon, 129 A.3d 234 was misplaced because he did not occupy a position within the corporation as a current or former director, trustee or donor.

Having determined that Farina lacked standing under any of his arguments or legal theories to contest the sale of the Property or implementation of the Settlement Agreement, the Court then turned to Farina’s TOPA arguments. The Court confirmed that while JKHC initially provided to Farina a statutory Notice, the stay entered by the Trial Court below shortly thereafter precluded further actions with respect to the sale of the Property or steps under TOPA which might otherwise be required including but not limited to a formal “offer of sale”. Citing to the facts of this case including the identification of the parties and timeline of the transaction (including a “. . . smooth transition for the current occupants of the property”, Jan Tr. at p. 13), the Court found as follows:

“D.C. Code 42-3404.02(c)(2)(M) explicitly exempts a transfer of property pursuant to court order or a court approved settlement agreement from the definition of a sale under TOPA. If there is no sale as defined by statute, the



owner of the property is not required to provide any tenants with any opportunity to purchase the property. Thus with the issuance of the September 29<sup>th</sup>, 2023 order approving the consent settlement agreement, the property was exempted from the requirements of TOPA” (Jan. Tr. at p. 13).

The decision of this Court in Juul v. Rawlings, 153 A.3d 749 (D.C. 2017) provides relevant, guiding, and compelling precedent to support the Trial Court Order. Simply stated, a Court-ordered settlement as occurred in this case can, and does, operate to relieve an owner of a single-family accommodation from the requirements of TOPA, and operates to avoid any actual or perceived TOPA right advanced by an occupant. The decision in Juul makes it clear that this Court-approved Settlement Agreement does qualify as a court-approved agreement and thus exempt from TOPA. Such agreements are favored by the Court which has acknowledged “. . . the council . . . enacted TOPA to discourage the displacement of tenants through the sale of rental properties and to provide tenants opportunities for home ownership, without interfering with a landlord’s property rights” (supporting citations omitted, Juul at 755). Indeed, the Court’s approval of the Settlement Agreement in this case did not and would not necessarily lead to “displacement of tenants” as a consequence. Indeed, Farina and his housemates were guaranteed affordable housing as a consequence of implementation of the Settlement Agreement because of the “opt in” and “opt out” features of the Agreement itself.

Furthermore, the Trial Court here, as required by Juul, did engage in specific factual determinations which could only be overturned unless clearly erroneous (Juul, Id. at 755). The Trial Court specifically and repeatedly reviewed the terms of the Settlement Agreement (September 2023) and again during the trial proceedings and again in the

January 2024 proceeding, in confirming as a matter of fact that the Settlement Agreement is Court-ordered, that Farina lacked standing to attack it, and that the Cy Pres Agreement, as structured and agreed by the District and JKHC, should be enforced.

In addition, the Trial Court recognized and applied the additional holding in Juul that:

“. . . the TOPA statute does not specify when a trial court order must be rendered in connection with a transfer of the property to be exempt from the definition of a “sale” and thus does not preclude our holding today” (Juul at 757).

Farina makes much of the argument that he had some sort of “vested right” with respect to the Property upon his receipt of the initial notice of a potential impending sale from JKHC. The initial question confronted by the Trial Court in the Cy Pres litigation was whether or not the Board of JKHC properly entered into a contract of sale of the Property. Accordingly, the only entity with power to contest that action of JKHC in entering into the sale contract in the first place, is the Attorney General for the District of Columbia pursuant to D.C. Code §29-403.04(b)(3). Thus, it is arguable that the third party contract obtained by JKHC to sell the Property mere days before a stay was entered herein by the Trial Court, was not a viable or legally valid contract as to which Farina had any rights at all. It was only after the Trial Court reviewed the Settlement Agreement, reviewed the action and determination of JKHC and D.C. to sell the Property, in the context of the Settlement Agreement, that the Trial Court gave approval (and legal vitality) to the third party contract so that JKHC could proceed with it to sell the Property. Accordingly, as the Trial Court observed and this Court has held:

“. . . a tenant’s potential right of first refusal is not so absolute that it may interfere with the judicial process and the court’s authority to enforce contracts, including settlement agreements” (Juul at 758).

Accordingly, JKHC contends that the record supports the propriety of the Trial Court Order below (dismissing Farina’s TOPA claim) because Farina has shown neither an error of law or that the Trial Court abused its discretion (Juul at 757).

Recent authority issued by this Court supports the Trial Court’s determination and the propriety of the transfer of the Property without any TOPA right to be exercised by Farina. This Court in Lane v. D.C. Department of Housing and Community Development et al. (Appeal No. 23-AA-0473 decided August 22, 2024) analyzed the TOPA rights of elderly or disabled persons whom seek to exercise such rights with respect to a single-family accommodation. Clearly Farina seeks to invoke certain rights as an elderly and qualifying tenant with respect to what has been treated in this case as a single-family accommodation. This Court in Lane confirmed the details and application of the TOPA Single Family Home Exemption Act Of 2018 and its application to or benefits available to a qualifying tenant. As this Court observed in such a situation:

Under the amended Act owners of single family accommodations who intend to sell their property need only provide tenants with notice of sale within three days of receiving or soliciting an offer, but that notice no longer triggers a tenant’s right to purchase. (D.C. Code §42-3404.09(b) (Id. at p. 3).

But the Court of Appeals has further clarified the limited rights of such a qualifying tenant as follows:

But even the elderly and disabled who are grandfathered in do not retain their full set of TOPA rights. They may no longer freely assign those rights as the only consideration they can receive for selling their limited TOPA rights is the “right to immediately use and occupy the tenant’s unit for a period of

twelve months following the sale . . . at the rate of rent charged as of the date of the offer . . .” (D.C. Code §42-3404.09(c)(6).

Accordingly, the Trial Court did not commit error by denying Farina any further opportunity to “purchase” the Property because even though he may be a “qualifying” elderly tenant, the TOPA statute does not give him unrestricted rights to purchase the Property. While not argued before the Trial Court or in this appeal, the record confirms that Farina is not a direct “tenant” of JKHC. Rather, he is the designated “Head Of Household” (i.e., property manager) designated by the named tenant in the MOU, Victor Howell House. Farina never had a Lease directly with JKHC, and his occupancy at the Property was terminable by Victor Howell House or JKHC pursuant to the MOU. But even in light of Farina’s unique occupancy status at the Property, the Court ultimately heard and litigated and decided Farina’s TOPA claims. By his own admission, in this case and in his pleadings, Farina intends either to acquire the Property himself (he is not a qualifying non-profit himself for purposes of Cy Pres doctrine application) nor can he assign rights to any sort of partner as he apparently proposes to do.

The Trial Court heard, on the merits, Farina’s TOPA claims over four days of trial, consolidated his previous defenses and claims under the Uniform Trust Act and Nonprofit Corporation Act in opposition to the transfer, and reviewed in detail the terms and conditions of the Settlement Agreement. The Judgments entered as a result did not in any way, shape or form constitute an abuse of discretion or error of law in any respect. Accordingly, the Judgment in favor of JKHC in the TOPA case should be affirmed.

## CONCLUSION

This Court should affirm, in all respects, the Judgments of the Trial Court as to which Farina appeals. Not only did the Trial Court correctly apply the Cy Pres doctrine to the JKHC Settlement Agreement to wind down its affairs and transfer its sole asset to a similar non-profit corporation, but the Trial Court correctly determined that Farina has no standing to object to the transfer or exercise perceived TOPA rights. By now it is apparent to JKHC, as it should be to this Honorable Court, that Farina's entire appeal (as was his effort before the Trial Court) was to acquire a valuable asset for his own benefit (including the net equity in the Property above the mortgage) for his own use and benefit in defiance of the Cy Pres doctrine or the requirement that the ultimate disposition of the non-profit Property be devoted to recognized, regulated, and legally sufficient non-profit purposes within a non-profit organization. Accordingly, this Court is respectfully requested to expedite its review of this appeal following oral argument, especially since all may be for naught if the foreclosure process described above outpaces this litigation.

Dated: August 29, 2024

Respectfully submitted,

*/s/ Stephen O. Hessler*

Stephen O. Hessler, Esq. #230102

Offit Kurman, P.A.

1325 G Street NW, Suite 500

Washington, DC 20005

Phone: (202) 296-3171

Fax: (202) 393-2104

shessler@offitkurman.com

*Counsel for Appellee Janet Keenan*

*Housing Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was filed and served on opposing parties electronically via the Court of Appeals electronic filing system on August 29, 2024.

*/s/ Stephen O. Hessler*  
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Stephen O. Hessler, Esq.  
*Counsel for Appellee Janet Keenan  
Housing Corporation*

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