No. 23-CV-0720

DISTRICT OF COLUMBIA
COURT OF APPEALS

CASA RUBY, INC.

Appellant,

v.

HASSAN NAVEED, *et al.*

Appellees.

On Appeal From An Order of Partial Final Judgment of the D.C. Superior Court,
The Hon. Danya A. Dayson

BRIEF OF APPELLANT CASA RUBY, INC.

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February 28, 2024

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CORPORATE DISCLOSURE STATEMENT

Casa Ruby, Inc. was a non-profit organization that was formed and registered in the District of Columbia on February 12, 2004. It operated in the District of Columbia until its Articles of Incorporation were revoked and it was administratively dissolved by the D.C. Department of Licensing and Consumer Protection on September 1, 2022. There is no parent corporation and no publicly held corporation that owns 10% or more of its stock.

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I. ISSUE PRESENTED

At issue in this appeal is whether, in ruling on an issue of first impression under D.C. law, the trial court erred in granting Third-Party Defendants' Motions to Dismiss for failure to state a claim upon which relief can be granted regarding the claims of breach of fiduciary duty asserted against them, despite allegations set forth in the District of Columbia's Amended Complaint and the Receiver's Third-Party Complaint (collectively, the "Complaints"), which incorporated the Court - Appointed Receiver's previously-filed Third Interim Report, on the basis of which the court could find that the Appellees, as directors of the defunct non-profit's Board, were deliberately indifferent or "willfully blind" to the alleged wrongful conduct of the non-profit's executive director amounting to actual knowledge on their part that inaction would harm the non-profit, ultimately and foreseeably leading to its financial inability to continue operating.

II. RELEVANT STATUTORY PROVISIONS

D.C. Code § 29-406.31. Standards of liability for directors.

a) A director shall not be liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

    1. None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

A. Subsection (d) of this section or a provision in the articles of incorporation authorized by § 29-402.02(c);

B. Satisfaction of the requirements in § 29-406.70 for validating a conflicting interest transaction; or

C. Satisfaction of the requirements in § 29-406.80 for disclaiming a business opportunity; and

2. The challenged conduct consisted or was the result of:

A. Action not in good faith;

B. A decision:

i. Which the director did not reasonably believe to be in the best interests of the corporation; or

ii. As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

C. A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

i. Which relationship or which domination or control could reasonably be expected to have affected the director's

judgment respecting the challenged conduct in a manner adverse to the corporation; and

ii. After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

D. A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

E. Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

b) The party seeking to hold the director liable:

1. For money damages, also has the burden of establishing that:

A. Harm to the nonprofit corporation or its members has been suffered; and

B. The harm suffered was proximately caused by the director's challenged conduct;

2. For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

3. For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

c) Nothing contained in this section:

1. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under § 29-406.70(a)(3), alters the burden of proving the fact or lack of fairness otherwise applicable;

2. Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under § 29-406.33, a conflicting interest

transaction under § 29-406.70, or taking advantage of a business opportunity under § 29-406.80; or

3. Affects any rights to which the corporation or a director or member may be entitled under another statute of the District or the United States.

d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

1. The amount of a financial benefit received by the director to which the director is not entitled;
2. An intentional infliction of harm;
3. A violation of § 29-406.33; or
4. An intentional violation of criminal law.

III. STATEMENT OF THE CASE

A. Procedural Background

This case was first initiated on July 29, 2022, by the District of Columbia's Office of the Attorney General (the "District") against Casa Ruby, Inc., a District nonprofit corporation ("Casa Ruby") and Ruby Corado, Casa Ruby's former Executive Director. On November 28, 2022, the District's Complaint was amended to include Casa Ruby LLC d/b/a Moxie Health, a District limited liability company

("Casa Ruby LLC"), Pneuma Behavioral Health LLC, a District limited liability company ("Pneuma Behavioral Health"), and Tigloballogistics LLC d/b/a/ Casa Ruby Pharmacy, a District limited liability company ("Tigloballogistics") (collectively, "Defendants"), and alleged that Defendants violated the District's Nonprofit Corporation Act ("NCA"), D.C. Official Code §§ 29-401.01, *et seq*., Wage Payment and Collection Law ("WPCL"), D.C. Official Code §§ 32-1301 *et seq*., the Minimum Wage Revision Act ("MWRA"), D.C. Official Code § 32-1001, *et seq*., and the common law. App. 079. In its Amended Complaint, the District sought injunctive and other relief to protect Casa Ruby's assets and alleged several examples of Defendants' violative conduct, including that Defendants permitted Ruby Corado ("Ms. Corado"), the former Executive Director, to have exclusive access to Casa Ruby's bank and PayPal accounts held in the name of, or created to benefit, Casa Ruby, and permitted Ms. Corado to expend hundreds of thousands of dollars of Casa Ruby's funds without Board oversight for both improper and unknown reasons. App. 006-011.

On December 23, 2022, Casa Ruby, as Cross-Complainant and Third-Party Plaintiff, acting by and through its Court-Appointed Receiver, the Wanda Alston Foundation, Inc. ("Receiver"), filed a Cross-Complaint and Third-Party Complaint, incorporating the allegations set forth in the District's Amended Complaint as well as the Receiver's previously-filed Third Interim Report to the Court, alleging that

Ms. Corado, as former Executive Director of the Cross-Defendants, engaged in various activities constituting misappropriation and wrongful conversion of Casa Ruby's assets, rendering it insolvent. App. 037-043. The Third-Party Complaint also alleged that the individual members of Casa Ruby's Board of Directors (hereinafter, "Board") breached their fiduciary duties by failing to exercise any oversight or control over Casa Ruby, thereby allowing Ms. Corado's unlawful conversion of Casa Ruby's funds to proceed unchecked. App. 041-43.

Thereafter, Appellee Zoltick (joined by Appellees Harrison and Consuela Lopez) and Appellee Naveed each filed a motion to dismiss the Cross-Complaint, arguing that the NCA shielded them from monetary liability. App. 045-065. Specifically, the Appellees argued that even if they were negligent in overseeing (or failing to oversee) the activities and affairs of Casa Ruby, the Cross-Complaint did not allege facts indicating that the individual Board members "at any time acted in such a way that D.C. Official Code § 29-406.31(d) would overcome the statutory bar of individual liability." App. 050, 061. In response, Appellant and the Receiver argued that Appellees' pervasive acts and omissions that shirked their fiduciary duties—including even the most basic obligations under Casa Ruby's by-laws, such as holding regular meetings or maintaining official records as alleged in the Complaints—constituted both an intentional infliction of harm upon Casa Ruby and a breach of the Appellees' fiduciary duties. App. 074. The Appellant also argued

that the Board's dereliction of duty was particularly pronounced given the Appellees "had numerous occasions to discover the facts of Ms. Corado's misconduct, but inexplicably made purposeful, deliberate, and conscious decisions not to investigate or exercise ordinary oversight," which allowed her to continue improperly converting substantial amounts of Casa Ruby's funds unchecked. App. 074. Appellant further explained that while there is no controlling precedent regarding the requisite intent required to impose monetary liability on the board members of a charitable nonprofit corporation in D.C., *see* D.C. Official Code § 29–406.31(d), the U.S. District Court for the District of Columbia assessed this section of law and concluded that "intentional harm occurs when a director intentionally takes action, knowing that the action will harm the organization." App. 080; *Bronner v. Duggan*, 317 F. Supp. 3d 284, 294 (D. D.C. 2018). In that case, the federal district court found that "[i]t does not matter whether a board member believed that his or her actions were 'right and proper[.]' On the contrary, it only matters if said acts or knowing omissions are at odds with the 'organizational health' of the charitable nonprofit corporation." *See* App. 072 (quoting *Bronner*, 317 F. Supp. 3d at 294). Based on these principles, Appellant asserted that the Complaints stated claims against the Appellees upon which relief could be granted. App. 073-76.

In its Order granting Appellees' motions to dismiss,[1] the Superior Court held that Casa Ruby did not sufficiently plead facts to state a claim for monetary relief under D.C. Code § 29-406.31(d). App. 083. Specifically, in satisfaction of D.C. Code § 29-406.31(a), the Superior Court found that Casa Ruby and the Receiver "stated facts establishing each board members' liability." App. 084. However, the Court concluded that while the "allegations in the Complaint are certainly sufficient to allow a reasonable inference that the failure to exercise oversight . . . [was] intentional," they did not "support a conclusion that such conduct was done with the knowledge that such inaction would cause harm," such that the Board members could be held liable for monetary damages. App. 089.

By motion filed pursuant to SCR-Civ. 54(b) on June 7, 2023, Casa Ruby—on its behalf and on behalf of the Receiver—requested that the Superior Court enter an order making its ruling granting the Appellees' motions to dismiss final and appealable. App. 96-101. The Superior Court, finding that the requirements of Rule 54(b) were met, entered its Order of Partial Final Judgment on July 28, 2023. App. 105. Casa Ruby timely filed this appeal on August 28, 2023. App. 106-08.

[1] The Superior Court denied Consuela Lopez's motion to dismiss based on specific facts unique to her case among the former Casa Ruby directors. App. 087-88.

B. Statement of Facts

Appellees Naveed, Quintana-Harrison, Rivera, and Zoltick served, at relevant times, on the Board of Casa Ruby, a charitable tax-exempt entity incorporated pursuant to Section 501(c)(3) of the Internal Revenue Code, which provided transitional housing and related social services to LGBTQ+ youth. App. 038-39. Despite receiving over $9.6 million in grants to serve the needs of Latino and LGBTQ+ youth communities in the District of Columbia between 2016 and 2022, Casa Ruby effectively ceased operations in the District in 2022 after Ms. Corado, left unchecked by any Board oversight, diverted Casa Ruby's funding for her own benefit, as well as the benefit of her friends and associates. App. 005. This financial misconduct ultimately resulted in Casa Ruby failing to pay its employees, failing to pay its vendors, and failing to pay rent at the properties it operated from until the time it was evicted, leaving vulnerable populations unserved. App. 003, 017.

There are likewise numerous factual allegations contained in the Complaints which, taken as true, show that the Appellees had a basis for actual knowledge of Ms. Corado's alleged malfeasance and that their failure to oversee and curtail her self-dealing and financial misconduct would result in harm to Casa Ruby. Specifically, the Complaints allege that even after Casa Ruby adopted a formal corporate structure—wherein it registered as a non-profit in D.C., adopted by-laws, and appointed a Board—it nevertheless lacked any semblance of proper corporate

formalities, with Ms. Corado intertwining her and Casa Ruby's affairs much as she had done when she initially sought to help Latino and LGBTQ+ youth out of her home as an informal charitable operation. App. 013, 030, 040-41. Despite their roles on the Board, the Appellees completely deferred to Ms. Corado and never fulfilled even the most basic functions consistent with their fiduciary duties as Board members. For example, Appellees held only one meeting between 2014 and 2020, despite Casa Ruby's bylaws requiring more frequent meetings. App. 013. Indeed, at numerous points throughout the existence of the organization, the Appellees declined to vote, investigate, or otherwise exercise any oversight whatsoever over conduct that would clearly have a detrimental effect on Casa Ruby, including Ms. Corado's alleged financial misconduct which included, among other things:

- Ms. Corado's frequent and regular use of money in Casa Ruby's financial accounts to bestow lavish gifts upon associates and personal friends;
- Ms. Corado's self-dealing through non-Board-authorized salary increases and bonuses;
- Ms. Corado's continuous and ongoing use of cash withdrawals, checks, money orders, wire transfers, online payment services (like PayPal), and electronic fund transfers from Casa Ruby's financial accounts, which totaled over $800,000;

- Between March and May 2021, Ms. Corado's taking of $200,000 of federal Paycheck Protection Program funds received by Casa Ruby, even though Casa Ruby was delinquent on rental payments for its facilities;
- Ms. Corado opening a $600,000.00 line of credit secured against Casa Ruby; and
- Ms. Corado revoking access to Casa Ruby's bank accounts to everyone but herself as of May 2021.

App. 008-09, 026-27, 040-41.

As alleged in the Complaints, in 2020 and 2021 in the midst of Ms. Corado's ongoing course of financial misconduct, the Board—after not meeting for several years—met to discuss transitioning Casa Ruby to new leadership and Casa Ruby's programming. App. 013-14. But even after these meetings, Ms. Corado continued to maintain sole control over Casa Ruby's bank accounts and finances—continuing to withdraw and spend Casa Ruby's funds without Board authorization. App. 013-014. Then, when Ms. Corado's misconduct became public knowledge, members of the Board still did nothing; for example, Appellee Zoltick, instead of honoring her fiduciary duty to Casa Ruby and reporting concerns to legal authorities, chose to quietly resign from the Board. App. 013-14.

IV. SUMMARY OF THE ARGUMENT

The Complaints alleged facts sufficient to raise a reasonable inference that Appellees, as members of Casa Ruby's Board of Directors, can be held liable for monetary damages under the NCA because their actions, deliberate indifference, and willful blindness to Ms. Corado's alleged fraudulent conduct amounted to actual knowledge given, as alleged in the Complaints, the Appellees: (1) flouted Casa Ruby's by-laws by conducting only one Board meeting between 2014 and 2020, and by allowing Ms. Corado to maintain absolute authority to appoint new Board members; (2) allowed Ms. Corado to continue maintaining sole control over Casa Ruby's bank and financial accounts even after Ms. Corado cut off access to Casa Ruby's bank and financial accounts to anyone but herself and the Board's meetings in 2020 and 2021 to discuss leadership transitions; and (3) failed to exercise any oversight whatsoever, letting Ms. Corado use Casa Ruby's funds to give gifts to associates and friends.

V. ARGUMENT

A. Standard of Review

"The only issue on review of a dismissal made pursuant to Rule 12(b)(6) is the legal sufficiency of the complaint." *Grayson v. AT&T Corp.*, 15 A.3d 219, 228-29 (D.C. 2011) (en banc) (quoting *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)). A complaint is sufficient if it contains "a short and plaint

statement of the claim showing that the pleader is entitled to relief," SCR-Civ. 8(a)(2). "The complaint need only 'contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Scott v. Fedchoice Federal Credit Union*, 274 A.3d 318, 322 (D.C. 2022) (quoting *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011)) (internal quotations omitted). A dismissal made pursuant to Rule 12(b)(6) is reviewed de novo. *Scott*, 274 A.3d at 322 (citing *Johnson-El v. District of Columbia*, 579 A.2d 163, 166 (D.C. 1990)).

B. Monetary Damages Are the Appropriate Remedy Against Appellees Pursuant to the Nonprofit Corporation Act.

The Nonprofit Corporation Act ("NCA") dictates that directors can be liable to their nonprofit for a wide range of conduct, including where they did not act in good faith, did not reasonably believe their decision was in the best interests of the corporation, acted with a lack of objectivity or lack of independence because of their relationship with another person, or engaged in sustained failures to "devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor." D.C. Code § 29-406.31(a). Further, the NCA dictates that a director can be held liable to a nonprofit for money damages where the director intended to inflict harm on the nonprofit. *Id*. § 29-406.31(d)(2).

Here, Appellees' alleged conduct violated at least one of the enumerated bases for director liability under the NCA. App. 084. This holding is not in dispute and is clear from the face of the Complaints. Indeed, the Complaints allege that in the several years leading up to Casa Ruby's ceasing of operations due to ongoing financial misconduct, the Board conducted *no* oversight. App. 008. The Board's lack of oversight clearly amounts to violations of the NCA, particularly against the backdrop of the facts alleged in the Complaints, including that Ms. Corado used Casa Ruby's funds to give gifts to associates and friends, withdrew over $800,000 in Casa Ruby funds, opened a $600,000 line of credit against Casa Ruby, and, as of May 2021, revoked access to Casa Ruby's bank accounts to everyone but herself; all of which occurred without any Board oversight or approval. App. 007-08, 040-41.

As discussed in more detail below, the allegations in the Complaints make clear that the Appellees are chargeable with actual knowledge that their inaction would harm Casa Ruby.

C. The Complaints' Allegations of Willful Blindness Support a Finding of Actual Knowledge.

The Superior Court, relying almost exclusively on its interpretation of the "plain language" of the statute, found that the intent element of D.C. Code § 29-406.31(d)(2) requires "actual knowledge" on the part of the Board members that their actions or inaction would cause harm, and does not encompass a Board member's disregard of clearly foreseeable harm or conscious inattention amounting

to willful blindness. App. 091. In reaching this conclusion, the Superior Court primarily focused on the statute's use of the word "intentional" as opposed to "knowing," and determined that the statute requires a director to have "actual knowledge" that their action, or failure to act, will cause harm. App. 090-91 (quoting *Bronner v. Duggan*, 317 F. Supp. 3d 284, 292 (D.D.C. 2018)). Based on these findings, the Superior Court held that, while "[t]he allegations in the Complaint are certainly sufficient to allow a reasonable inference that the failure to exercise oversight in the ways described were intentional, . . . [t]here are no facts alleged that support a conclusion that the individual board members acted with actual knowledge that their inaction would cause harm to the organization." App. 089.

Even accepting as true the Superior Court's interpretation of D.C. Code § 29-406.31(d)(2) as requiring the Board members to have "actual knowledge" that their actions or inaction would cause harm, the Superior Court's Order nevertheless adopted an unduly restrictive analysis regarding the types of conduct that support a finding of actual knowledge. Indeed, as explained by the U.S. Supreme Court, courts "have recognized in civil cases that willful blindness may support a finding of actual knowledge." *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, —— U.S. ——, 142 S.Ct. 941, 948 (2022) (citing *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, —— U.S. ——, 140 S.Ct. 768, 779 (2020)); *see also Marion v. Bryn Mawr Tr. Co.*, 288 A.3d 76, 91 (Pa. 2023) ("Moreover, willful blindness may support a finding of actual

knowledge.") (citing *Intel Corp.*). "Circumstantial evidence . . . may also lead a court to find that an applicant was actually aware of, or willfully blind to, legally inaccurate information." *See Unicolors, Inc.*, at ——, 142 S.Ct., at 948 (citing *Intel Corp.*); *see also* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR ECON. HARM § 28 cmt. C ("If the defendant's knowledge cannot be proven directly, it sometimes may be inferred from circumstantial evidence such as the defendant's possession of documents or presence during relevant conversations."). Further, courts have held that to prove actual knowledge, it is not necessary for the plaintiff to demonstrate the defendant "desired the tortious outcome." *Marion*, 288 A.3d at 91 (Pa. 2023) (citing RESTATEMENT (THIRD) OF TORTS: LIAB. FOR ECON. HARM, § 28 cmt. C). And, "while the standards are not coextensive, . . . evidence of intentional ignorance or willful blindness may support an inference of actual knowledge in particular cases." *Id*.

In *Intel Corp.*, petitioners argued that receiving a disclosure was equivalent to actual knowledge whether or not the receiver had reviewed that disclosure, and that no other evidence, including allegations of willful blindness or other circumstances, was necessary. *Intel Corp.*, 140 S.Ct. at 779. Although the Court in that case found that the mere existence of a generalized disclosure of which the plaintiff may have become aware was insufficient to show the plaintiff's actual knowledge, it noted that evidence of willful blindness could still be used to do so. *Id.* Similarly, in *Unicolors,*

Inc., the court found that a copyright holder's lack of knowledge of the legal insufficiency of its registration would not prevent copyright enforcement, but that evidence reflecting willful blindness could defeat a claim of alleged lack of knowledge and establish the element of actual knowledge necessary to preclude such enforcement. *Unicolors, Inc.*, 142 S.Ct. at 948. Unlike in *Intel Corp.* or *Unicolors, Inc.*, Appellant has here specifically invoked the Appellees' alleged willful blindness and has pled the facts necessary to demonstrate it, as the Superior Court expressly found.

D. Taking the Facts Alleged in the Complaints as True, the Appellees' Alleged Conduct Constitutes Actual Knowledge.

As acknowledged by the Superior Court, a complaint need only include "factual allegations sufficient to support an inference or conclusion that the board member . . . intentionally, rather than negligently, inflicted harm on Casa Ruby." App. 086; *see also* Super. Ct. Civ. R. 8(a)(2) (stating that a complaint need only include a "short and plain statement of the claim showing that the pleader is entitled to relief"). In addition, it is well-settled that courts should "construe the complaint in the light most favorable to the plaintiff" and that a complaint need only "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

Here, the Court's failure to credit the Complaints' allegations supporting an inference of willful blindness in its findings regarding whether Appellees had actual knowledge reflects its refusal to construe the Complaints' factual allegations in the light most favorable to Appellant. Indeed, Appellant provided ample factual allegations in the Cross-Complaint and Supplemental Response to "nudge their claims across the line from conceivable to plausible." App. 082 (quoting *Tingling-Clemons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (quotation and citation omitted)). As Appellant explained in its Supplemental Response, the Appellees had oversight and control over Casa Ruby "[a]s a matter of law" and could have put a stop to Ms. Corado's "activities at any time." App. 073; D.C. Code § 29–406.01. And Appellant alleged that, as a matter of law, a fiduciary relationship existed between Appellees and Casa Ruby "because they served as Members of the Board of Directors for the organization[.]" App. 042. Fiduciary obligations, by their nature, implicate the imposition of some duty to be proactive in protecting the corporation's interests. However, the Appellees failed by every measure to meet these duties. Indeed, as Appellant further asserted, Corado "drained . . . over $800,000 from the organization . . . opened a $600,000 line of credit" and took exponential salary increases from 2014 to 2020. App. 040. Despite these actions—which drove Casa Ruby to shut its doors to District of Columbia residents in need due to financial insolvency and allowed Ms. Corado to abscond with hundreds of

thousands of dollars in public grant money—Appellees only held a single Board meeting between 2014 and 2020, resulting in a breach of Appellees' fiduciary duty to Casa Ruby. App. 013.

Moreover, the District's Amended Complaint—which the Receiver's Cross-Complaint incorporates by reference—alleged that despite meeting in 2020 and 2021 to discuss transitioning Casa Ruby's leadership, Appellees never replaced Ms. Corado, who was permitted to maintain sole control over all of Casa Ruby's bank accounts. App. 013. Construed in the light most favorable to the Appellant, and even without the benefit of discovery, it can reasonably be inferred that Appellees are chargeable with willful blindness suggestive of or functionally equivalent to actual knowledge of problems with Casa Ruby's leadership, that changes needed to be made, and that failing to make changes was already causing or inevitably would cause harm. Indeed, as the Superior Court conceded, the Appellees' inactions "could accurately be described as [their] *deliberate* indifference to the known risks of their inaction." App. 093. The Court therefore acknowledges not only that the Appellees' indifference to Ms. Corado's actions was conscious and intentional, but also that the Appellees knew the risks that this intentional inaction posed to the financial stability of Casa Ruby.

Ultimately, the Superior Court erroneously departed from the pleading standard by disregarding the Complaints' allegations of breach of fiduciary duty and

willful blindness, which, when construed in "the light most favorable to the plaintiff," could easily lead to a showing satisfying the actual knowledge requirement of D.C. Code § 29-406.31(d)(2). *Potomac Dev. Corp.*, 28 A.3d at 544.

E. Upholding the Superior Court's Order Would Set an Alarming Precedent.

The NCA provides that "all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors." D.C. Code § 29-406.01(b). Members of the board therefore assume, upon appointment, various obligations and duties, including acting in good faith in what each director reasonably believes is the best interest of the nonprofit and "discharging their [oversight and decisional] duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances." D.C. Code § 29-406.30(a)-(b). For these obligations to bear even modest weight under the law, it must be the case that directors that have not upheld these duties can be held responsible. Under the Superior Court's Order, however, the Board of Directors would be deemed not to know that their failure to hold more than one meeting over six years, during which time Ms. Corado appears to have drained hundreds of thousands of dollars from the organization, would damage that organization. App. 13, 40-43. Essentially, allegations that a board of directors failed to exercise its oversight responsibilities at all would be considered

insufficient to hold that board of directors monetarily liable for damages caused by their inaction, no matter how foreseeable the harm resulting from such inaction.

Under the NCA, a nonprofit board of directors is responsible for "*all* corporate powers, . . . activities and affairs . . ., and . . . oversight" of that nonprofit. D.C. Code § 29-406.01(b) (emphasis added). If the Superior Court's Order is allowed to stand, directors could both abdicate these responsibilities and claim not to know that such abdication would have adverse consequences for their organizations with impunity. Indeed, such a standard essentially provides non-profit directors with an incentive to engage in a "see-no-evil, hear-no-evil" hands-off approach to their responsibilities under circumstances in which the NCA expressly contemplates the opposite. Such an outcome would comport neither with the letter of the law nor with the responsibilities of the directors, and would encourage willful blindness on the part of any nonprofit directors who do not wish to perform the duties the law requires.

VI. CONCLUSION

The Complaints' alleged facts are sufficient to raise a reasonable inference that Appellees, as members of Casa Ruby's Board of Directors, can be held liable for monetary damages under the NCA where their act and omissions reflected in only one Board meeting between 2014 and 2020, in violation of Casa Ruby's bylaws; allowing Ms. Corado to maintain absolute authority to appoint new Board members, despite a requirement in Casa Ruby's bylaws that new Board members be

elected by a supermajority of the Board; allowing Ms. Corado to maintain control over Casa Ruby's bank accounts despite Board meetings in 2020 and 2021 to discuss leadership transitions; and failing to gain access to Casa Ruby's financial audits, statements, or an organizational chart amounted to deliberate indifference or willful blindness to Ms. Corado's alleged fraudulent conduct. The Superior Court's ruling to the contrary in granting Appellees' motions to dismiss was incorrect and must be reversed.

Dated: February 28, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2024, true and correct copies of the foregoing Brief of Appellant Casa Ruby, Inc. were served upon all counsel of record via electronic mail.

/s/ *Theodore A. Howard*
Theodore A. Howard

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

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

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

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

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

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

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

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

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

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

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

Theodore A. Howard
Signature

No. 23-CV-720
Case Number(s)

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