In The

DC Court of Appeals

Appeal No. 20-CV-0556

1417 BELMONT COMMUNITY DEVELOPMENT LLC

Appellant,

v.

DC

Appellee

On Appeal from the Superior Court
of the District of Columbia,
Civil Case No. 2010 CA 007158 B
(Hon. Michael L. Rankin)

REPLY BRIEF OF APPELLANT

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All citations to the DC Code refer to the 2009 version, which governs here.

ARGUMENT IN REPLY

In its opening brief, Belmont explained that Linda Argo was a final policymaker pursuant to Monell v. Dep't of Social Services, 436 U.S. 658 (1978), because she was vested with authority to enforce code violations without any involvement by other city officials. Thus, DC's decision to raze Belmont's building without providing proper notice or an opportunity to be heard was a constitutional violation for which the District could be held liable.

The District provides a scattershot response. It starts by arguing that Ms. Argo should not be considered a final policymaker. (See Part A, below.) Next, it argues that even if Ms. Argo is a final policymaker it should not be held liable. (See Part B, below.) Then it argues that even if it would be held liable for Ms. Argo's action this Court should find that it satisfied Belmont's due process rights by giving Belmont notice and an opportunity to be heard—even though it undeniably failed to comply with the explicit notice service requirements of the DC Code. (See Part C, below.) Finally, it argues that even if it loses all of those preceding arguments it was permitted to raze the building without notice in cases of imminent danger. But of course this is not a case of the District dispensing with notice—here, the District did give notice and it waited more than three months before razing the building. (See Part D.)

A. The District Errs in Arguing That Ms. Argo Is Not A Final Policymaker.

1. The District Errs in Arguing that Final Policymaker Status Requires Rulemaking Authority.

The District begins its brief inauspiciously. Its begins with the contention that the D.C. Circuit held in Singletary v. DC that a decisionmaker must have rulemaking authority to be considered a final policymaker. On the strength of that decision, the District argues that Ms. Argo cannot be a final policymaker because she lacked rulemaking authority. As such, it argues, it cannot be held liable for her decision to raze Belmont's building. Def Br., pp. 27-28, *citing Singletary*, 766 F.3d 66 (D.C. Cir. 2014).

But the District misreads *Singletary*. *Singletary* recognizes that rulemaking authority is an *indicator* of policymaker status but it does not require rulemaking authority for a decision-maker to be a policymaker.

Notably, the District advanced this very same argument in BEG Invs., LLC v. Alberti, 144 F.Supp.3d 16, 25-26 (D.D.C. 2015). Judge Contreras rejected the argument, explaining that the District "read[s] *Singletary* far too broadly":

> [The] focus [in *Singletary* to rulemaking authority] does not mean that a decisionmaker must always have rulemaking authority for municipal liability to lie. Such a holding would conflict with cases that have found municipal liability warranted where state law empowered a particular government official to make a particular, one-time decision, without any reference to

> whether those officials possessed broader rulemaking authority.

BEG Invs., 144 F.Supp.3d at 25-26 (footnote and cites omitted), *citing* McMillian v. Monroe Cty., 520 U.S. 785 (1997).

There are many cases, as Judge Contreras wrote, in which officials were found to be final policymakers even though they lacked rulemaking authority. Indeed, one such case is the Supreme Court's decision in Pembaur v. Cincinnati. The Court held there that a prosecutor was a final policymaker because he had exercised his authority without any control by other officials. *Pembaur*, 475 U.S. 469, 484 (1986); *see also* Scahill v. DC, 271 F.Supp.3d 216, 232 (D.D.C. 2017), *aff'd on other grounds*, 909 F.3d 1177 (D.C. Cir. 2018); Thompson v. DC, 967 F.3d 804 (D.C. Cir. 2020) (same). That decision was not based in any way on whether the prosecutor had rulemaking authority. Id.

The District has made a basic logical error: *Singletary* recognized that rulemaking power demonstrates final policymaker status, but that does not mean, as the District contends, that rulemaking power *defines* policymaker status.

Thus, the District's first argument falls because it was based on a misreading of Singletary—a reading which, if it were not a *mis*reading, would have been squarely contrary to the Supreme Court's decision in *Pembaur*.

2. *Thompson* Did Not Hold That Policymaker Status Is Tied to Exercising Power Contrary to Its Delegation.

In Thompson v. DC, the DC Circuit explained that whenever an official "exercise[s] his [or her] authority . . . without any control by other District officials," the official is a final policymaker under *Monell*. 967 F.3d at 811. Thus, because Ms. Argo exercised her authority without any control by other District officials,[1] she is a final policymaker. The District replies that "*Thompson* is . . . beside the point" because there is no evidence that Ms. Argo "exercised her enforcement powers *contrary* to the authority delegated to her". Def. Br., p. 30 (emph. added).

But nothing in *Thompson* even suggests that the decision was driven by whether the decision-maker exercised his powers contrary to the authority that had been delegated to him. The basis of the *Thompson* decision was simply that the deciding official was empowered to make decisions without any

[1] As Director of DCRA, Ms. Argo was the District's "Code Official". DCMR 12A-103.1 (2009). As Code Official, she had plenary authority over matters touching on the building code, including the powers (i) to enforce all provisions of the Construction Codes; (ii) to approve all permits and certificates issued for the erection, razing, demolition, alteration, and use of buildings; (iii) to deem a structure unsafe and to notify an owner that its structure has been determined to be unsafe; (iv) to issue orders to property owners to require repairs or demolition of unsafe structures; (v) to issue notices and orders and to institute administrative and legal actions to correct illegal or unsafe conditions; and (vi) to issue permits for building, demolition, and razing. *See* 55 DC REG. 13094. Thus, Ms. Argo was a final policymaker because she exercised plenary authority in each of these areas without any control by other District officials.

control by other DC officials. *Thompson*, 967 F.3d at 816; *see* Def. Br., p. 29. (This was the same reasoning as the Supreme Court relied on in *Pembaur*. 475 U.S. at 484.)

Here, Ms. Argo was empowered to make the decisions about which Belmont complains without any control by other District officials. Therefore, she, too, is a final policymaker.

B. Neither of the District's Two Arguments Denying that Ms. Argo's Conduct Can Trigger Municipal Liability Has Merit.

The District next turns to arguing that even if Ms. Argo is a final policymaker, the District should not be held liable. The two arguments it makes in this regard are based on fundamental misunderstandings of due process law.

1. The District Errs In Arguing that Belmont Must Show that a Final Policymaker Decided What Notice to Provide.

DC argues that even if Ms. Argo had final policymaking authority, Belmont is not entitled to relief because Ms. Argo was not involved in any decisions related to the notice which was given to Belmont. Def. Br., p. 31. It argues that "[to] establish final policymaker liability . . . [Argo] must have made a deliberate policy decision with respect to notice". Id. (emph. added). And it argues that "Belmont exclusively—and mistakenly—focuses on the decision to raze, as opposed to any decision regarding notice, which is the municipal action directly implicated by its procedural due process claim". Def. Br., p. 29.

The District is flat out wrong.

It is fundamental due process law that *Monell's* final policymaker requirement refers to the person who causes the *deprivation*, not the person who fails to inform the victim of his or her due process rights. Indeed, the Supreme Court made this clear even before it decided *Monell*:

> The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a [constitutional] right. . . . Second, the plaintiff must show that the defendant deprived him of this constitutional right . . . "under color of law."

Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970).

Monell followed the principal laid out in *Adickes* when it held that municipal liability under Section 1983 depends on showing that the deprivation—whether of life and liberty, to acquire and possess property, or to pursue and obtain happiness and safety—was done by the government. *Monell*, 436 U.S. at 690, 694; *see* Kidwell v. DC, 670 A.2d 349, 352 (D.C. 1996). This requirement is the natural result of the bedrock principle that Section 1983 permits recovery only for deprivations which are caused by the government. *Monell*, 436 U.S. at 694.

Likewise, in the *Thompson* cases the DC Circuit explained that, "the District is liable for Thompson's termination if King was a final policymaker for Lottery personnel decisions". Thompson v. DC, 832 F.3d 339, 348 (D.C. Cir.

2016); *Thompson*, 967 F.3d at 813; *see also* Roberts v. US, 741 F.3d 152, 161 (D.C. Cir. 2014) (explaining that a plaintiff in a due process action must allege that the government deprived him or her of a liberty or property interest).

The recognition that the requirement for final policymaker status applies to the one who causes the deprivation (not the one responsible for notice) is found consistently in post-*Monell* cases. In *Pembaur*, 475 U.S. at 471, for example, the Supreme Court offered numerous illustrations of cases in which a decision by a municipal policymaker on a single occasion could satisfy the policymaker requirement. *All of those illustrations looked at who caused the underlying deprivation, not the separate act of denying due process rights*. In Connick v. Thompson, the Supreme Court discussed whether the government's decision not to train certain employees was made by an official policymaker—again, focusing on who caused the harm, not who gave or did not give notice. 563 U.S. 51 (2011). And in Canton v. Harris, 489 U.S. 378, 388 (1989), the Court considered whether the government can be held liable when its failure to properly train its employees leads to the employees' violation of someone's due process rights, focusing, again, on whether the government caused the injury, not on who denied due process.

The District deprived Belmont of its building. While Belmont might well have been *saved from that injury* had it been afforded due process, the denial of

due process was not the *cause* of the injury. At most it can be said that the denial of due process meant that Belmont lost the opportunity to block the injury from occurring. Thus, the District errs in focusing on the who decided not to give Belmont notice of the upcoming destruction of its property because the law demands that we look to who decided to engage in the governmental taking which was the cause of the injury.

2. A Plaintiff Must Show Deliberate Indifference Only In Cases Where the Government Causes Harm Indirectly.

The District argues next that it cannot be held liable because there is no proof that Ms. Argo was deliberately indifferent to the harm that her raze decision would cause Belmont. Def. Br., pp. 35 *et seq*. But this argument, too, reflects a fundamental misunderstanding of the law.

A municipality is liable for a due process violation only when the municipality itself (acting through its governing bodies or one of its final policymakers) causes constitutional injury. *Monell*, 436 U.S. at 694. In Bryan County v. Brown, the Supreme Court extended municipal liability to cases in which the municipality's action does not *directly* cause constitutional injury but which causes constitutional injury "downstream". 520 U.S. 397, 415 (1997). For example, a municipal policymaker who inadequately trains her employees has done nothing unconstitutional but the municipality can still be held liable if

an employee injures someone because of that deficient training. *See* Gross v. DC, 734 A.2d 1077, 1086 (DC 1999).

Importantly, though, the gap in such cases between the municipality's actions and the downstream harm caused by those actions makes it difficult to determine whether the municipality can fairly be thought to be the cause of the harm (as is essential for due process liability). Therefore, the Supreme Court held that a plaintiff bringing such a case must show that the decision-maker demonstrated "a conscious disregard for a high risk that" that the consequence of a decision which is facially-sound would be a violation of federal rights. *Bryan Cty.*, 520 U.S. at 405; *see Connick*, 563 U.S. at 61.

But the requirement to show deliberate indifference applies only in cases in which when the municipality has taken action which is *indirectly* violative of constitutional rights. *Bryan Cty.*, 520 U.S. at 407. "[A] governing body's own intentional acts that violate constitutionally protected rights amount to 'per se' § 1983 liability" because causation in those cases is clear, but when the policymaker's acts cause constitutional injury only indirectly, further proof of culpability is required by showing deliberate indifference. McDowell v. Brown, 392 F.3d 1283, 1291 (11th Cir. 2004).[2] Thus, the District erred in its

[2] Every federal appellate court which has examined this question has recognized that the deliberate indifference requirement exists only when the

presumption that every plaintiff in a due process case must demonstrate deliberate indifference.

In this case, the government's final policymaker, Ms. Argo, issued the raze order; her action was the direct cause of the deprivation. As such, the District is liable with no requirement that Belmont demonstrate deliberate indifference.

C. The District Did Not Satisfy Belmont's Due Process Rights.

The fundamental promise of the Constitution's due process clause is that the government may not deprive a person of a Constitutional right without first providing notice and an opportunity to be heard. *Monell*, 436 U.S. at 690. Thus, while the DC Code explicitly permits the District to raze private property, it also explicitly requires that the District first provide the property owners with notice and an opportunity to be heard. Indeed, the Code explicitly prescribes the method by which that notice must be given. DC Code § 42-3131.03. The

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deprivation is caused not directly by the municipal action but indirectly due to how the instruction is implement. *See* Waller v. City & Cty. of Denver, 932 F.3d 1277, 1284 (10th Cir. 2019) (holding, "at least for claims of inadequate hiring, training, or other supervisory practices, a plaintiff "must demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences"); Jones v. Town of E. Haven, 691 F.3d 72, 81 (2d Cir. 2012); Hinojosa v. Butler, 547 F.3d 285, 295-96 (5th Cir. 2008); Stemler v. City of Florence, 126 F.3d 856, 865 (6th Cir. 1997); Lapre v. Chicago, 911 F.3d 424, 430 (7th Cir. 2018); Szabla v. Brooklyn Park, Minn., 486 F.3d 385, 390 (8th Cir. 2007); Mendiola-Martinez v. Arpaio, 836 F.3d 1239, 1247-48 (9th Cir. 2016).

government can choose to delivery notice by hand-delivery, by email, or by leaving the notice with a proper person at the owner's place of business. Id.

The District admits that it did not comply with the method of providing notice as directed by Section 42-3131.03. It argues, though, that it should not be held liable for its failure. As the following discussion demonstrates, none of its reasons have merit.

1. The Violation Of A State Statute Does Not Itself Create A Due Process Violation But Belmont's Claim is Based on the District's Due Process Violation, Not the Violation of a Statute.

First, DC argues that the violation of state law does not constitute a constitutional violation. Def. Br., p. 41, *citing* Barwood, Inc. v. DC, 202 F.3d 290, 294 (D.C. Cir. 2000); Snowden v. Hughes, 321 U.S. 1, 11 (1944); Tate v. DC, 627 F.3d 904, 908 (D.C. Cir. 2010). DC is correct as to that general rule, but it is inapposite to this case.

In Barwood v. DC, cabbies filed a due process claim after the DC taxicab commission issued unlawful regulations. *Barwood*, 202 F.3d at 294. The court held that even though the regulations might have been unlawful, that did not equate to a violation of the cabbies' *due process* rights. "The fact of a state law violation does not resolve whether a plaintiff has been deprived of due process." Id. In other words, a viable due process claim requires a due process violation in addition to an underlying substantive constitutional injury. Id.

Belmont complains that DC razed its building without providing notice in the manner required by the Code. Belmont looks to statute to define the scope of the process to which it was due—but the gravamen of its complaint remains the District's failure to provide notice and an opportunity to be heard. That defining the method of delivery of the notice requires looking to a statute does not make this the sort of case discussed in *Barwood*. Barwood held simply that the government's violation of a statute is not itself a due process violation.

Thus, *Barwood* is of no consequence to this case because here Belmont *has* alleged a due process violation—failure to provide notice—alongside the constitutional violation.

2. Mere Notice and an Opportunity to be Heard Is Not Enough When the Law Imposes Stricter Requirements.

Next, the District argues that Belmont was entitled to nothing more than notice and an opportunity to be heard. Def. Br., p. 41. Therefore, it argues, DC was not required to comply with any specific statutory instructions regarding the method of service. But the District misreads the cases on which it relies.

In Tate v. DC, the plaintiff complained that her due process rights had been violated when the District sold her property at auction three days earlier than the date stated on the notice DC sent her and without waiting the 45 days after notice required by DC Code. 627 F.3d at 908. The DC Circuit rejected her

claim, holding that due process means the opportunity to be heard at a meaningful time and in a meaningful way. *Tate*, 627 F.3d at 908; *see* Def. Br., p. 41 *quoting* Dusenbery v. US, 534 U.S. 161, 170-71 (2002). Ms. Tate received notice and an opportunity to be heard—indeed, she had a full hearing—so she was not denied due process. Id. It was on the basis of these same principles that this Court held in Kidd Int'l Home Care v. Prince that notice is adequate when it is "accomplished by a method reasonably calculated to afford the party an opportunity to be heard." 917 A.2d 1083, 1086 (DC 2007).

But this case is different from *Tate* and *Prince* in two important respects. First, unlike Ms. Tate, Belmont did not receive notice of the raze and was never afforded an opportunity to be heard. *Tate* is inapposite because it depends on facts plainly not present in this case.

Second, and more fundamental, this case is governed not only by the due process clause but also by statutes which explicitly direct the manner in which notice was to be given. DC Code § 42-3131.03(1). In *Tate* and *Prince*, the plaintiffs were entitled to due process but there were no statutes dictating how process was to be given so there was no reason for the court to look at the method of notice. Here, though, the DC Code gave Belmont the right to receive notice in a particular method, marking a fundamental difference in the cases—and in the proper outcome.

3. The District Errs in Claiming that Service by Mail is Always Adequate.

Next, the District argues that its service of Belmont via First Class Mail was constitutionally adequate because this Court has held that service by mail is reasonably calculated to give notice in most circumstances and therefore it generally satisfies due process. Def Br., p. 39, *citing* Boddie v. Robinson, 430 A.2d 519, 521 n. 4 (DC1981), and Doe v. DC Metro. Police Dep't, 948 A.2d 1210, 1219 n. 2 (DC 2008).

The District errs because it overlooks context.

In Boddie v. Robinson this Court held that service by mail is adequate in most circumstances in the context of examining a regulation that required that the District "notify" the property owner. *Boddie*, 430 A.2d at 521 n. 4. The regulation did not require that the property owner actually *receive* the notice. Id. In the context of that law—requiring the *transmittal* of notice but not require the *receipt* of the notice—the holding makes sense. But that does not mean that that conclusion makes sense all the time—as the *Boddie* court itself held explicitly, *immediately following that footnote*, when it observed that this Court has always required strict compliance with the tax sale statue and regulations so as to satisfy due process rights. 430 A.2d at 522.

The *Boddie* Court made it clear that context matters; it held that service by mail is adequate "in most circumstances". 430 A.2d at 521 n. 4; *see also Doe*,

948 A.2d at 1219 n. 2. Adequate in most circumstances does not mean *all* circumstances. In Miles v. DC, for example, there was a law which required notice by registered or certified mail and permitted newspaper publication only if the registered mail notice is returned for reasons other than refusal. The *Miles* court held:

> This Court can discern no persuasive reason in this case for approving a mode of service that is less effective than that directed by the DC Code in those situations where a property owner is sent notice compelling him to show cause why his building should not be condemned. When the Board entrusted the notice of its determination to demolish the subject buildings to the safekeeping of the normal channels of the postal service, it selected a less adequate method than that specified by the Code, and it also failed to comport with basic constitutional prerequisites.

Miles, 354 F.Supp. 577, 585 (D.D.C. 1973), *aff'd*, 510 F.2d 188 (D.C. Cir. 1975). The District argues that this decision was driven by the peculiar facts of the case, but the facts to which it refers were not material to the court's decision.[3]

[3] The District also relies on this Court's holding in Coleman v. Scheve that service by regular mail is adequate, but the foundation of that decision is plainly no longer the view of this Court. The Coleman court wrote:

> The existence of procedures for the assessment of taxes is a matter of common knowledge [so] courts have found that taxation proceedings may be accompanied by less stringent notification provisions than may be required for other proceedings affecting property interests.

Miles is not a mere outlier, driven by peculiar facts, as the District contends. Other cases come out just as *Miles* does. In Associated Estates, LLC v. Caldwell, for example, this Court held that the District must comply strictly with statutory service requirements before it deprives someone permanently and irretrievably of their property. 779 A.2d 939, 944 (DC 2001). The Court did not follow the general rule that mailing is adequate; adequate in some cases does not mean all cases.

The District argues that *Associated Estates* is inapplicable because it dealt with the government sale of real property caused by the property owner's failure to pay property taxes. Def. Br., p. 42. But that is a meaningless distinction because the reasoning in that case demonstrates that it has far broader applicability. This Court held in *Associated Estates* that it has consistently required strict compliance with notice requirements for a tax sale both to guard against the deprivation of property without due process of law and because it is the policy of the state to give a delinquent taxpayer every

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Coleman, 367 A.2d 135, 138 (DC 1976) (ellipses omitted). That clearly is no longer the Court's view. *See*, *e.g.*, Steward v. Moskowitz, 5 A.3d 638, 639 (DC 2010). In fact, shortly after *Coleman* was decided this Court held (contrary to *Coleman*) that, "the District may effect a valid conveyance of property for nonpayment of real estate taxes only by 'strict compliance' with the tax sale statute and regulations." Boddie v. Robinson, 430 A.2d 519, 522 (DC 1981) (emph. added).

reasonable opportunity, compatible with the rights of the state, to redeem his or her property. *Associated Estates*, 779 A.2d at 943. It further noted that the City Council's mandate that the property owner be notified by certified or registered mail is an indication of "the particular importance [the Council] attached to this potentially final opportunity for people to save their property." Id. at 944, *quoting* Potomac Bldg. Corp. v. Karkenny, 364 A.2d 809, 812 (DC 1976).

This case is identical in both of those respects: Just as in the tax foreclosure context, the specific notice requirements which are laid out in the DC Code demonstrate "the particular importance [the DC City Council] attached to this potentially final opportunity for people to save their property." *Associated Estates*, 779 A.2d at 944. Indeed, as this Court pointed out in *Associates Estates*, a tax foreclosure can be undone—but the same is not true after a building is razed, meaning that a property owner's interest in obtaining all of his, her, or its notice rights is even more important than in the tax sale context.

Nothing in *Associated Estates* suggests that its holding was limited to tax foreclosures. But any thought that the protective approach of *Associated Estates* was limited to tax sales is put to rest by this Court's decision in Steward v. Moskowitz. In *Steward*, this Court considered a case involving a judgment

sale—not a tax sale. 5 A.3d 638, 639 (DC 2010). This Court held that there must be strict compliance with the Code for a judgment sale to be sound because the applicable statutes use mandatory language—"shall" and "shall not"—and because this Court has "consistently . . . required strict compliance with our statute governing tax sales of real property, and . . . we see no principled way of distinguishing between tax sales and execution sales with respect to a judgment debtor. Both are forced sales of an owner's property to satisfy an indebtedness, and both have due process implications for the owner." *Steward*, 5 A.3d at 651. Both of those points are equally applicable to this case.

Decisions like *Miles*, *Associated Estates*, and *Steward* make it clear that the District must comply with the DC Code when it specifies the method of service required for a particular governmental action. The existence of such statutes makes this case markedly different from cases like *Barwood*, *Snowden*, and *Tate* on which DC relies where the general rule can hold sway.

DC urges this Court to find its service to be adequate even though by its own admission it failed to provide Belmont with notice in the manner which is explicitly required by DC law. This Court cannot do so because the DC Code requires that before the District razes a building it must notify the property owner using one of three specified methods. This Court cannot simply ignore

that statutory requirement on the ground that service by First Class mail is "generally" adequate.

D. The Facts Prove That the District Was Not Acting Summarily to Protect the Public.

The District makes one further argument which requires response. The District claims that it acted properly because it is permitted to act summarily when necessary to protect the public safety. Def. Br., p. 46. But this is not a case in which the government made a deliberate choice to act summarily without giving notice because of an imminent threat. As the District explained, "[a]n emergency may justify dispensing with legal notice as prerequisite to removal or destruction of a building." But the District did not "dispense with legal notice". It recognized that it was obligated to give notice and it did so (albeit incorrectly). Thus, clearly the District did not believe that instant action, dispensing with notice, was required. See, e.g., Miles v. DC, 354 F.Supp. 577, 580–81 (D.D.C. 1973), *aff'd*, 510 F.2d 188 (D.C. Cir. 1975).

E. Belmont is Entitled to Judgment.

DC argues that Belmont is not entitled to summary judgment because "a reasonable jury could find that Belmont had not met its burden of proof after weighing all the evidence about whether and the extent to which Director Argo was involved in the provision of notice to Belmont". Def. Br., p. 49. Not true. As

described above, Ms. Argo was not required to be involved with notice; the final policymaker requirement applies to the substantive deprivation, not the notice. And in that regard the unrebutted evidence demonstrated that Linda Argo, and no other person, signed the raze orders. DC also argues that there are disputes of material fact which a jury would have to decide—though it can actually identify no such disputed facts. The only fact it mentions in that context is whether Belmont actually received the March 2009 notice—but there is no evidence in the record contradicting Belmont's contention that it did not receive the notice. Thus, that is not a disputed fact. Because there are no facts in dispute, this Court should find that Belmont is entitled to judgment.

Respectfully submitted,

January 4, 2023

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Certificate of Service

I certify that the foregoing Plaintiff-Appellant's Reply Brief was electronically filed with the Court of Appeal's online filing system on this the fourth day of January in the year 2023. I further certify that the e-filing system will serve counsel for the Respondent electronically. I certify further that the requisite printed copies of the brief and appendix have been dispatched by to the printer for printing and mailing on this date.

Respectfully submitted,

January 4, 2023

Micah Salb, Esq. (453197)

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.

[signature]
Signature

20-CV-0558
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