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*In the*  
**DISTRICT OF COLUMBIA**  
**COURT OF APPEALS**

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MAHMOOD NAWAZ,

*Appellant,*

v.

BNSIC TITLE HOLDING CORPORATION, ET AL.,

*Appellees.*

On Appeal from the Superior Court of the District of Columbia  
*Case No. 2020 CA 003226 B*  
*(The Honorable Florence Pan)*

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**REPLY BRIEF OF APPELLANT MAHMOOD NAWAZ**

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## TABLE OF CONTENTS

<b>I.</b>	<b>ARGUMENT .....</b>	<b>1</b>
<b>A.</b>	<b>THE TENANT COUNTEROFFER WAS RATIFIED ON SEPTEMBER 9, 2019, AFTER EXPIRATION OF THE NON-EXTENDABLE 15-DAY RIGHT OF FIRST REFUSAL PERIOD ON SEPTEMBER 2, 2019. ....</b>	<b>2</b>
<b>B.</b>	<b>THE LOWER COURT’S FACTUAL FINDINGS VINDICATE MR. NAWAZ’S ASSERTION THAT THE TOPA TIMELINES EXPIRED .....</b>	<b>4</b>
<b>C.</b>	<b>MR. NAWAZ SUFFICIENTLY RAISED THE TOPA EXPIRATION ARGUMENTS BEFORE THE COURT ON SUMMARY JUDGMENT, IN HIS PLEADINGS AND MOTIONS PRACTICE. ....</b>	<b>6</b>
<b>II.</b>	<b>CONCLUSION.....</b>	<b>8</b>

## TABLE OF AUTHORITIES

### Cases

<i>Biotechpharma, LLC v. Ludwig &amp; Robinson, PLLC</i> , 98 A.3d 986, 992 (D.C. 2014)	7
<i>Coburn v. Heggstad</i> , 817 A.2d 813 (D.C. 2003)	4
<i>Flax v. Schertler</i> , 935 A.2d 1091, 1100 (D.C. 2007)	7
<i>Hunter v. United States</i> , 606 A.2d 139, 144 (D.C.)	7
<i>Tindle v. United States</i> , 778 A.2d 1077, 1082 (D.C. 2001)	6
<i>William J. Davis, Inc. v. Tuxedo LLC</i> , 124 A.3d 612, 620-21 (D.C. 2015)	3

### Statutes

D.C. Code § 42-3404.05	3
D.C. Code § 42-3404.10(2)(A)	2

Appellant Mahmood Nawaz (“Mr. Nawaz”), by undersigned counsel, herein replies to the Brief of Appellee BNSIC Title Holding Corporation (“BNSIC”) which was filed on February 16, 2022.

**I. ARGUMENT**

Essentially BNSIC’s main argument on appeal is that the issue of whether the Tenant Counteroffer was ratified after expiration of the 15-day non-extendable Right of First Refusal Period was waved because Mr. Nawaz’s *pro se* pleadings did not sufficiently outline the complex procedural steps required by TOPA. In their brief BNSIC flatly ignores the defect, despite Mr. Nawaz’s repeated assertions that BNSIC failed to establish they adhered to TOPA deadlines throughout the pleadings, in his motion for summary judgment and in opposition to BNSIC’s own motion.

Notwithstanding BNSIC’s bare bones assertions,<sup>1</sup> Mr. Nawaz is permitted to argue on appeal that the Tenant Contract was presented after expiration of the Right of First Refusal Period for two reasons: (1) Mr. Nawaz’s *claim* that the Nawaz

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<sup>1</sup> Further, Mr. Nawaz made repeated requests during discovery, but Defendants failed to produce any evidence showing that they adhered to TOPA deadlines. The only evidence provided by BNSIC in the lower court, on its face, creates a plausible inference that they failed to agree to an extension of the negotiation period and accordingly failed to ratify the contract before the conclusion of the 15-day, non-extendable right of first refusal period. *See* JA-0077-0084; *see also* JA-0328 (Pardo Letter) (Letter Responding to LOI); JA-0337-0344 (Response to Def. Interrogatories).

Contract is primary is preserved even if he did not make the precise *argument* at summary judgement that was presented on reconsideration; and (2) he sufficiently raised the argument that the TOPA timeline expired both at and prior to the summary judgement stage given the liberal pleading standard afforded to *pro se* litigants.

**A. THE TENANT COUNTEROFFER WAS RATIFIED ON SEPTEMBER 9, 2019, AFTER EXPIRATION OF THE NON-EXTENDABLE 15-DAY RIGHT OF FIRST REFUSAL PERIOD ON SEPTEMBER 2, 2019.**

The 15 day Right of First Refusal Period began to run on August 19, 2019 at the conclusion of the Negotiation Period<sup>2</sup> and ended on September 2, 2019, prior to the Association's tender of the Tenant Counteroffer on September 9, 2019. As such, there was never a valid contract between the Seller and Association to purchase the Subject Property.

Once an owner of a 2—4 unit building receives a tenant or tenant organization's letter of interest in purchasing, the parties must negotiate in good faith towards the signing of a contract for a period of at least 90 days (the "Negotiation Period"). "See D.C. Code § 42-3404.10(2)(A) ; *see also* D.C. Code § 42-3404.05.

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<sup>2</sup> The Negotiation period began to run on May 20, 2019, after the seller received the LOI from the tenant. The negotiation period was not extended by agreement between the Seller and Tenant Association.

In *William J. Davis, Inc. v. Tuxedo LLC*, this Court addressed the kind of communications between a seller and tenant necessary to form a “reasonable” agreement to extend. In doing so, the Court articulated that “reasonableness” under TOPA,

. . . is a concept that requires a relatively precise timetable, grounded in industry norms or standard practice—one that is not unduly distant into the future—in order to assure that the tenants' right to supplant a third-party contract is not inordinately prejudicial to the third-party purchaser and the property owner. It follows that, to assure the required precision, any extension—a word implying both a beginning and an end—must be determined prospectively and set forth a finite period; it cannot simply be an open-ended arrangement.

*See William J. Davis, Inc. v. Tuxedo LLC*, 124 A.3d 612, 620-21 (D.C. 2015) (holding parties did not agree to wave the initial settlement date under tenant contract based on email exchange refusing to close under contract).

In discovery, Mr. Nawaz requested “all documents, including notices and responses exchanged between each of Tenant(s) and Landlord Seller.” Nawaz Discovery Requests (“Nawaz Requests”) (JA-0337-0344) (quoted text at JA-0340). The Plaintiff did not produce any communications either extending the 90-day Negotiation Period or indicating that the Association and Plaintiff engaged in negotiations between May 20, 2019, when Seller received the LOI and September 9, 2019, when the Tenant Counteroffer was tendered.

Unlike the negotiation period, the right of first refusal period is not extendable. *Coburn v. Heggstad*, 817 A.2d 813 (D.C. 2003) (Act only allows extension of time for negotiation and settlement with a tenant who has expressed in writing an interest in purchasing the property).

If the tenant does not respond with a matching contract within the 15-day period, the existing contract is automatically deemed to be the "primary" contract and the landlord is then free to sell the property to the third party. *Lealand Tenants Ass'n, Inc. v. Johnson*, 572 A.2d 431, 434 (D.C. 1990). The Act manifestly does not contain any provision for extensions of time of the 15-day period covering "right of first refusal."

*See id.* at 818.

Seller has not alleged, nor have they produced any information which demonstrates that there was an agreement to extend the Negotiation Period beyond 90 days, notwithstanding multiple requests by Mr. Nawaz prior to the lawsuit and during discovery.<sup>3</sup>

## **B. THE LOWER COURT'S FACTUAL FINDINGS VINDICATE**

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<sup>3</sup> The only communications produced were the TOPA Notice (JA-0122-0166), the LOI (JA-0168), a letter from Plaintiff's Counsel providing certain requested information about the Property on May 22, 2019 (JA-0328), and an email exchange between Seller and the Association on October 28 and 29, 2019, setting February 25, 2020, as the closing deadline. (JA-0222) (email exchange between Plaintiff and the Association confirming ratification of the Tenant Contract); Seller's SUMF ¶ 6 (JA-0078). None of these documents contained any representations or reference to extending the Negotiation Period.

**MR. NAWAZ’S ASSERTION THAT THE TOPA  
TIMELINES EXPIRED .**

In their brief, BNSIC correctly identifies the two (2) arguments asserted by Mr. Nawaz on appeal concerning TOPA deadlines at the Subject Property. See Seller’s Brief at p. 4. Mr. Nawaz asserts the parties failed to close on the Tenant Contract by the February 25, 2020, deadline. Further, he argues that the Court incorrectly granted Summary Judgment because the Plaintiff could not establish through their production and other evidence on the record that the Seller and Tenant Association agreed to extend the ninety day negotiation period.

Central to both these claims is the lack of evidence put forward by BNSIC leaving open a plausible inference that the (i) TOPA deadlines were not adhered to and, (ii) BNSIC and the Tenant failed to produce communications showing that the 90 day negotiation period or later settlement date was extended.

The lower court made findings of fact sufficient uphold Mr. Nawaz’s claim:

[Seller] sent the requisite TOPA Notices on April 29, 2019; and timely received a Statement of Interest from the President of the Association on May 20, 2019. [Seller] and the Association ratified the Tenant Contract on October 28, 2019.

*See* Order Granting SJ (JA-0266-0275) (quoted text at JA-0271). On these facts alone the court could, and should have found that the October 28, 2019 Tenant Contract fell well outside of the TOPA timelines.



The lower court's finding of facts show that Mr. Nawaz unquestionably raised the claim that the Nawaz Contract was primary, due to the Association and Seller's noncompliance with TOPA. He may not have made the argument as clearly as experienced counsel would have but, they were sufficient to put the lower court on notice of the defect.

**C. MR. NAWAZ SUFFICIENTLY RAISED THE TOPA EXPIRATION ARGUMENTS BEFORE THE COURT ON SUMMARY JUDGMENT, IN HIS PLEADINGS AND MOTIONS PRACTICE.**

Even assuming *arguendo* Mr. Nawaz insufficiently articulated the ROFR argument, he is not foreclosed from presenting the argument on appeal.

The Supreme Court of the United States and this court have distinguished between 'claims' and 'arguments' holding that although 'claims' not presented in the trial court will be forfeited (and thus subject to the plain error review standard), parties on appeal are not limited to the precise arguments they made in the trial court

*See Tindle v. United States*, 778 A.2d 1077, 1082 (D.C. 2001) (emphasis added) "In short, we are satisfied that the record before us shows that the trial judge was 'fairly apprised as to the questions on which she [was] being asked to rule'" *See id.* (citing *Hunter v. United States*, 606 A.2d 139, 144 (D.C.) (emphasis added)); *see also Biotechpharma, LLC v. Ludwig & Robinson, PLLC*, 98 A.3d 986, 992 (D.C. 2014) ("[A]lthough 'claims' not presented in the trial court will be forfeited . . . , 'parties on appeal are not limited to the precise arguments' they made in the trial court.").

Mr. Nawaz's *pro se* assertions, although stated more generally than would have been by an attorney, were legally and factually correct and go to the heart of the argument now on appeal. Further, it is well settled that "Courts in this jurisdiction are required to construe *pro se* pleadings liberally" and this case should not be an exception. *Flax v. Schertler*, 935 A.2d 1091, 1100 (D.C. 2007)

In considering the parties dueling motions for summary judgment, the lower court did not afford any weight to the statements made in Mr. Nawaz's filings, asserting his position that the Tenant Contract was invalid because the parties did not adhere to the requirements of TOPA.

Specifically, in his communication of January 15, 2021, declining to release the Nawaz Contract which was attached and incorporated in numerous filings, Mr. Nawaz wrote that the Association and Seller were not in compliance with TOPA and the Tenant Contract was void and unenforceable as a matter of law. (JA-0225)

In his Counterclaim Mr. Nawaz clearly establishes that the evidence on the record was insufficient and raised questions about the ratification of the Tenant Contract, "[d]espite repeated requests, [Seller] did not establish by providing enough documentation that alleged Tenant Contract. . . was ratified pursuant to and in compliance with the TOPA regulations." See Nawaz Counterclaim ¶ 3 (JA-0069) (emphasis added).

In his Opposition to Seller's Motion for Summary Judgment Mr. Nawaz represents that the January 15, 2020, Letter, "was provided following [Seller's] refusal to provide any information regarding [the Tenant Contract]." (JA-0241) (emphasis added). Mr. Nawaz reasonably believed Seller was withholding information regarding the negotiation of the Tenant Contract, specifically related to TOPA timelines. On these facts, clearly identified by the lower court, Seller had not and cannot establish that they are entitled to judgment as a matter of law, because there is no evidence that the Tenant Counteroffer was timely.

Finally, in his own *pro se* Motion for Summary Judgment Mr. Nawaz argues that the Seller failed to comply with TOPA and asserts in his supporting Statement of Undisputed Material Facts, "[d]espite repeated requests from Nawaz, [Seller] did not establish by providing documentation. . . alleg[ing] Tenant Contract was ratified pursuant to and in compliance with TOPA regulations." *See* (JA-0255-0257) (quoted text at JA-0256) (emphasis added).

As a *pro se* litigant Mr. Nawaz sufficiently articulated the defects with the Tenant Contract to put the Court on notice that these issues were material to the ultimate decision.

## **II. CONCLUSION**

The Seller and the Association failed to enter into a contract by the end of the *non-extendable* right of first refusal period under D.C. Code §42-3404.08. Mr.

Nawaz raised the claim that the Tenant Contract was void due to noncompliance with TOPA in pleadings and other filings throughout the litigation and that claim is preserved for this appeal. W

WHEREFORE, based on the foregoing, Mr. Nawaz respectfully requests that the Court reverse the trial court's grant of summary judgment and remand the matter for entry of summary judgment in Mr. Nawaz's favor.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

On this 9<sup>th</sup> day of March 2022, the undersigned hereby certifies that a true and correct copy of the foregoing Brief was sent by Electronic Filing and Service to:

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# 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.**

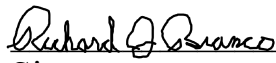
I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

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

- An individual’s social-security number
- Taxpayer-identification number
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- 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.



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21-CV-662

Case Number(s)

03/09/2022

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