NO. 23-CV-0977

DISTRICT OF COLUMBIA COURT OF APPEALS

TYROSHI INVESTMENTS, LLC,

Appellant,

v.

U.S. BANK, N.A., SUCCESSOR TRUSTEE
TO LASALLE BANK, N.A.,

Appellee.

Appeal from the District of Columbia Superior Court
2020-CA-001727-B
(Honorable Robert Rigsby)

REPLY BRIEF OF APPELLANT TYROSHI INVESTMENTS, LLC

January 10, 2025

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Miscellaneous

ARGUMENT

I. THE STATUTE OF LIMITATIONS BARS US BANK'S CLAIMS

A. Three-Year Limitations Period Applies to US Bank's Claims

The record below and precedent from this Court makes clear that the three-year statute of limitations governs each of US Bank's[1] claims. Claims for wrongful foreclosure and those that seek a declaratory judgment are generally viewed as having a three-year limitations period under the catchall provision of D.C. Code § 12-301(a)(8). This was most recently confirmed in *Staab v. Wells Fargo Bank, N.A.*, No. 23-CV-0492, 2024 WL 5081985, at *3 (D.C. Dec. 12, 2024)[2], which held that D.C. Code § 12-301(a)(8) applied to a similar set of claims that sought to invalidate a foreclosure under the Super-Priority Lien Statute. The applicability of the three-year limitations period was also acknowledged by the trial court when it dismissed the exact same claims against the Association on the grounds that the causes of action were time-barred. JA 279. The precedent from this Court makes clear that under District of Columbia law a three-year limitations period applies to US Bank's claims.

Recognizing that it cannot satisfy a three-year limitations period, US Bank instead advocates for a 15-year statute of limitations under D.C. Code § 12-

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[1] For purposes of clarity and consistency, Tyroshi will use the same defined terms that were contained in its opening brief.

[2] This Court's decision is *Staab* was decided after Tyroshi filed its initial brief, but before US Bank filed its brief. It is for this reason that the case is cited in US Bank's brief but not in Tyroshi's initial filing.

301(a)(1), which governs the "recovery of lands." Each of US Bank's arguments in support of this position are deficient. US Bank's position fails to account for the actual nature of its pleading, which does not seek to recover any "lands." JA 59-73. Rather, US Bank's pleading asserts five causes of action which look to adjudicate, *inter alia*, the validity of the foreclosure sale at which Tyroshi purchased its interest in the Property. JA 66-72.[3] None of these claims seek to dispossess, evict, or eject Tyroshi from property that it was holding. The reality is that US Bank's claims are seeking declaratory judgment for a wrongful foreclosure, not for recovery of lands.

Nor could an action for "recovery of lands" even be at issue because Tyroshi was not in possession of the Unit. This litigation started as an effort by Tyroshi to re-gain possession of the Unit through a request for injunctive relief. JA 29. Tyroshi was ultimately denied such relief by both the trial court and this Court in a subsequent appeal. *See Tyroshi Investments, LLC v. Jenkins Row Unit Owners' Association*, Case No. 21-CV-340 (D.C. March 8, 2023) (per curiam); JA 7. Indeed, the facts as alleged in Tyroshi's claims against the Association state that Tyroshi was dispossessed of the Unit starting on March 6, 2020, months in advance of US Bank's filing. *Compare* JA 32 *with* JA 44 *and* JA 201. In short, US Bank

[3] US Bank also asserts a cause of action seeking to declare D.C. Code § 42-1903.13 as unconstitutional and for unjust enrichment. The former does not have a statute of limitations; the latter also has a three-year limitations period. *See* D.C. Code § 12–301(8); *Boyd v. Kilpatrick Townsend & Stockton*, 164 A.3d 72, 80 (D.C. 2017) (unjust enrichment has a three-year limitations period).

could not "recover lands" from Tyroshi because Tyroshi was not in possession of the Unit at the time US Bank filed its complaint.

The authorities US Bank relies on to advance a 15-year limitations period do not support its position. US Bank does not rely on a single piece of appellate authority – binding or persuasive – for its broad proclamation that all "quiet title actions are actions for the recovery of lands and are, therefore, subject to a fifteen-year statute of limitations." Appellee Br. at p. 18. The only authority that is relied upon is the federal trial court decision in *Lancaster v. Fox,* 72 F. Supp. 3d 319 (D.D.C. 2014), a case that does not support such a sweeping proposition. In *Lancaster*, the federal trial court was asked to rule on a pending motion to dismiss for failure to state a claim which asserted statute of limitations as one of the grounds for dismissal. *Id.* at 324-25. In denying the motion to dismiss, the court in *Lancaster* held that it was unclear which limitations period applied based on the case's complex factual background, and thus, it was "premature to dismiss Lancaster's suit on [statute of limitations]." *Id.* at 325. Contrary to US Bank's position, the decision in *Lancaster* did not find that all quiet title actions are governed by the 15-year limitations period set forth in D.C. Code § 12-301(a)(1), but rather, that it was too early to determine which limitations period was applicable.

This Court has – as recently as a month ago – acknowledged that an action that seeks to declare a super-priority lien foreclosure as void is subject to a 3-year

statute of limitations. *See Staab, supra*. The ruling on limitations from *Staab* controls over *Lancaster* and demonstrates US Bank's claim is time barred.

B. Any Claim Under the Federal Foreclosure Bar is Similarly Time-Barred

US Bank does not satisfy the six-year limitations period that applies to the Federal Foreclosure Bar. *See* Tyroshi Br. at pp. 22-23. US Bank does not dispute that if the six-year limitations period relating to the Federal Foreclosure Bar applies, its claims would be time-barred. Appellee Br. at pp. 20-21. Instead, US Bank argues that Tyroshi failed to raise statute of limitations as a defense to the Federal Foreclosure Bar, but then argues that no claim has been asserted under that statute. *See* Appellee Br. pp. 20-21. Neither argument that US Bank advances has merit.

First, there is no question that Tyroshi asserted the statute of limitations as a defense. The affirmative defense is found in Tyroshi's answer; it was raised in multiple dispositive motions; it was identified in the pretrial statement; and Tyroshi included it in its proposed findings of fact and conclusions of law. JA 297, 481, 608, 718, 1988. While the application of the limitations defense to the Federal Foreclosure Bar may not have been clearly articulated, that was for good reason, as the Federal Foreclosure Bar was not raised (or even mentioned) by US Bank until the eve of trial. *See* Tyroshi Br. at pp. 28-32. Thus, the record makes clear that the statute of limitations was properly raised.

Second, US Bank puzzlingly argues that it "did not bring a claim under the Federal Foreclosure Bar and is therefore not subject to the six-year limitations period." Appellee Br. at p. 21. While Tyroshi agrees that US Bank never asserted the Federal Foreclosure Bar prior to trial, the reality is that US Bank advanced the statute as a basis for voiding Tyroshi's purchase at trial and in post-trial briefing. JA 1723. The Federal Foreclosure Bar makes clear that an action brought under the statute carries a six-year limitations period, which has been confirmed by other courts examining the subject. *See* 12 U.S.C. § 4617(b)(12); *see also Bank of Am., N.A. v. Los Prados Cmty. Ass'n*, 854 F. App'x 827, 830 (9th Cir. 2021) ("**The six-year statute of limitations prescribed in § 4617(b)(12)(A) applies to quiet title claims that invoke the Federal Foreclosure Bar…**") (emphasis added); *M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 859 (9th Cir. 2020). To the extent US Bank's quiet title action is premised on the Federal Foreclosure Bar it is time barred.

II. INCONSISTENT RULINGS FROM THE TRIAL COURT HIGHLIGHT THAT THE ASSOCIATION WAS A NECESSARY PARTY

The trial court's application of two separate statutes of limitations to identical claims highlights precisely why the Association was a necessary party to invalidate the sale. US Bank asserted identical claims against the Association and Tyroshi seeking to invalidate the same foreclosure sale. JA 59. The trial court dismissed the claims against the Association by applying a three-year statute of limitations, but later on in the case applied an entirely different limitations period to the claims

against Tyroshi. *Compare* JA 287, *with* JA 2090. These inconsistent legal rulings concerning the exact same transaction exemplify why the Association was a necessary party to invalidating the Foreclosure Sale.

Rather than address this clear inconsistent application of the law, US Bank instead raises several arguments that only distract from the point. First, US Bank argues that Tyroshi waived its right to challenge the Association's absence from the case. Appellee Br. at pp. 21-22. This is not true. Tyroshi repeatedly argued for the identical application of the statute of limitations but the trial court instead choose to apply the law inconsistently. *See, e.g.* JA 481 (arguing for application of a three-year limitations period); JA 2090 (applying 15-year limitations period).

Second, US Bank argues that Tyroshi's position is barred by law of the case due to Tyroshi's prior appeal. Appellee Br. at pp. 22-23. Law of the case prevents "multiple attempts by a party to prevail on the same question." *Schroeder v. Weinstein*, 585 A.2d 1382, 1383 (D.C. 1991). It is designed to prevent re-litigation of the same issue in the same case. *Sowell v. Walker*, 755 A.2d 438, 444 (D.C. 2000). Tyroshi's prior appeal dealt with entirely different claims relating to possession and ownership of the Unit. *See Tyroshi Investments, LLC v. Jenkins Row Unit Owners' Association*, Case No. 21-CV-340 (D.C. March 8, 2023) (per curiam). Importantly, the prior appeal did not deal with the issue of the statute of limitations and therefore law of the case does not apply.

Finally, US Bank relies on this Court's recent decision in *Staab* to argue that the Association was not necessary for the resolution on this dispute. Appellee Br. at p. 24. While at first blush it would appear that *Staab* is applicable, there is one key fact that distinguishes the case: in *Staab* the condominium association was never made a party to the proceeding, but here, US Bank included them as a defendant. *Compare Staab v. Wells Fargo Bank, N.A.*, No. 23-CV-0492, 2024 WL 5081985, at *2 (D.C. Dec. 12, 2024), *with* JA 59. US Bank's decision to include both buyer (Tyroshi) and seller (the Association) as defendants to the same claims that seek to unwind a foreclosure sale is clearly distinct from *Staab*. Stated differently, the Association became a necessary party the moment US Bank decided to include them as a party to this case.

III. THE FEDERAL FORECLOSURE BAR DOES NOT APPLY

A. The Federal Foreclosure Bar Was Never Properly Raised.

US Bank's initial position is that the mere fact that it asserted a quiet title claim means that the Federal Foreclosure Bar was implicitly pled. Appellee Br. at p. 30. The District of Columbia is a notice pleading jurisdiction meaning that the pleading must provide a short statement of facts that "'give the defendant fair notice of what the plaintiff's claim is and **the grounds upon which it rests**.'" *Warren v. Medlantic Health Grp., Inc.*, 936 A.2d 733, 742 (D.C. 2007) (internal citation omitted) (emphasis added). This Court has acknowledged that the notice pleading

standard exists because the procedural rules allow the use of discovery, summary judgment, and pretrial procedure to identify the precise legal theories and issues in the case thus eliminating unfair surprise. *Id.* Here, US Bank did not mention the Federal Foreclosure Bar in its initial pleading, and to the contrary, argued that Tyroshi's purchase should be set aside on equitable principles rather than pursuant to statute. JA 59. Throughout the case, US Bank raised a number of arguments in support of its position and invoked other statutes to support its claim for relief, but not once did it seek to apply the Federal Foreclosure Bar. *See, e.g.,* JA 324 (arguing for the application of the District of Columbia statute on corporate registration); JA 718 (citing to District of Columbia statute on deed recordation). Even in the Joint Pretrial Statement, US Bank did not once mention the Federal Foreclosure Bar. *See infra*.

Moreover, US Bank's own conduct confirms that the Federal Foreclosure Bar was not actually a claim or legal theory that was included in the Complaint. On the eve of trial, US Bank sought leave to amend the Complaint to include new allegations relating to the Federal Foreclosure Bar. There would be no need to make such an amendment absent the fact that the claim was not alleged in the original pleading and was not developed in the case itself. US Bank's efforts to amend demonstrate that the Federal Foreclosure Bar was never pled.

Regardless, US Bank's position that the Federal Foreclosure Bar was implicitly pled in the Complaint misses the point, as the statute's absence from the pretrial statement is equally problematic. This Court has noted that:

> The purpose of the pretrial conference is to define the claims and defenses of the parties in order to narrow the issues, eliminate unnecessary proof and lessen the opportunity for surprise thereby expediting the trial. Parties are bound by the pretrial order which, in the words of the rule, 'limits the issues for trial' and 'such order when entered controls the subsequent course of the action.' **The parties may not later inject an issue not raised at the pretrial conference**….

Redding v. Capitol Cab Co., 284 A.2d 54, 55 (D.C. 1971) (emphasis added); *see also Smith v. Washington Sheraton Corp.*, 135 F.3d 779, 784 (D.C. Cir. 1998) (A litigant is entitled to "rely on the parties' pretrial statements and the pretrial order to inform her of 'precisely what [was] in controversy.'"). Federal courts have similarly found that the failure to include a theory of liability in a pretrial statement precludes a party from pursuing that theory at trial. *See Winmar, Inc. v. Al Jazeera Int'l*, 741 F. Supp. 2d 165, 185 (D.D.C. 2010) ("A party's failure to advance a theory of recovery in a pretrial statement issued following discovery conference constitutes waiver of that theory.") (internal citation omitted). Here, there is no dispute that US Bank failed to include any reference to the Federal Foreclosure Bar in the Joint Pretrial Statement. JA 718. The absence of any reference to the Federal Foreclosure Bar should have precluded any arguments concerning the statute at trial.

Neither of the trial court decisions that US Bank relies on supports its position that a party can raise an undisclosed claim (or even a legal theory) on the eve of trial. Nowhere in the decision in *NewRez, LLC v. Francis*, No. 22-CV-561 (APM), 2024 WL 4314016 (D.D.C. Sept. 11, 2024), does the federal district court state that a party is not required to reference the Federal Foreclosure Bar in its pleading or subsequent joint pretrial statement. In fact, US Bank admits that references to the Federal Foreclosure Bar were contained in the relevant pleading in *NewRez.*

The Superior Court decision in *Reverse Mortg. Solutions, Inc v. Moore, Jr.*, No. 2014-CA-07660-R(RP), 2023 WL 3975088, at *3 (D.C. Super. June 07, 2023) is also not applicable. Beyond being a trial court order, the portion of the ruling that US Bank relies upon discusses the relation back doctrine, not whether proper notice of the application of the Federal Foreclosure Bar was provided. Notably, the decision is devoid of any discussion as to whether and to what extent notice of the intention to rely on the Federal Foreclosure Bar was provided. *Id.*[4] Even assuming *arguendo* that no notice was provided in the *Moore* case, the case was decided on summary judgment, not after a trial, which also renders the case distinguishable.

B. US Bank Lacks Standing to Assert the Federal Foreclosure Bar.

[4] The opinion does seem to indicate that the defendant in *Moore* knew in advance of summary judgment that the Federal Foreclosure Bar was being pursued, as the Court notes that the case was previously remanded "for further proceedings consistent with…federal law." *Id.*

US Bank also lacks standing to assert the Federal Foreclosure Bar because Fannie Mae is no longer the owner of the Note. The Federal Foreclosure Bar vests the right to protection from foreclosure in Fannie Mae. *See* 12 U.S.C. § 4617(j)(3). There is no dispute that Fannie Mae sold the Note to US Bank, thus terminating its interest in the loan and the protection it was afforded by the Federal Foreclosure Bar. While Fannie Mae potentially has rights under the Federal Foreclosure Bar, US Bank does not, and therefore lacks standing to assert the statutory protection.

US Bank initially claims that Tyroshi waived the right to challenge standing because the issue was not raised in the lower court. Appellee Br. at p. 30. However, a party is free to raise standing at any time and may even do so for the first time on appeal. *E.g. Riverside Hosp. v. D.C. Dep't of Health*, 944 A.2d 1098, 1103 (D.C. 2008). Therefore the question of standing has not been waived.

The remainder of US Bank's arguments are equally unavailing. First, US Bank argues that courts have consistently found that "third-party plaintiffs have standing to assert the Federal Foreclosure Bar." Appellee Br. at p. 30. However, the cases that US Bank relies on found that loan servicers, who are working for Fannie Mae, have standing to assert the Federal Foreclosure Bar. *Nationstar Mortg. LLC v. Saticoy Bay LLC, Series 9229 Millikan Ave.*, 996 F.3d 950, 955 (9th Cir. 2021). This is very different from what is taking place here, where Fannie Mae has no ownership

of the loan, no present relationship to the loan, and has not indicated that it wishes to assert any right it may have formerly had under the Federal Foreclosure Bar.[5]

US Bank next argues that it inherited the right to assert the Federal Foreclosure Bar as part of its purchase, relying on legal authorities that stand for the proposition that the transfer of a note carries with it all rights to enforce the instrument. Appellee Br. at p. 31. Tyroshi does not dispute that US Bank, as a transferee of the Note, has the right to enforce it, but the issue in this case does not concern the right to enforce the Note, it relates to the right to enforce a particular statute. The Federal Foreclosure Bar is plain and unambiguous in that it applies to, and is designed to protect, the "agency" (i.e. Fannie Mae). While the right to enforce the Note transferred to US Bank, the protection of the Federal Foreclosure Bar did not.

C. Federal Foreclosure Bar Does Not Apply Because the Unit was Never Fannie Mae Property.

US Bank cannot circumvent the plain language of the Federal Foreclosure Bar. The statute clearly applies to the "property" of Fannie Mae, which is **not** the Unit, but rather a lien – in the form of a deed of trust – that is attached to it. *See* 12 U.S.C. § 4617(j)(3). The plain statutory language prevents a third-party from subjecting **the lien** to "levy, attachment, garnishment, foreclosure, or sale" without Fannie Mae's consent. None of the aforementioned occurred here. The "property"

[5] US Bank concedes that it is aware of no case law stating that the owner of a note formerly owned by Fannie Mae has the ability to assert the Federal Foreclosure Bar. Appellee Br. at p. 31.

that was the subject of attachment and foreclosure was the Unit. *See Chase Plaza Condo. Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 173-74 (D.C. 2014) (citing D.C. Code § 42–1903.13). The Unit was never owed by Fannie Mae. The plain meaning of the Federal Foreclosure Bar renders it inapplicable.

In response, US Bank does not meaningfully engage with the text of the statute at all, nor does it acknowledge that the precise "property" that is at issue here is a lien interest and not the Unit itself. Appellee Br. at pp. 32-34. Instead, US Bank simply argues that "[c]ourts have uniformly applied the Federal Foreclosure Bar to condominium units securing loans owned by Fannie Mae…" and again relies solely on a series of trial court decisions to support its position. *Id.* Notably absent is any appellate authority, particularly from this Court, that supports US Bank's reading of the statute.[6] The reality is that the applicability of the Federal Foreclosure Bar, and more importantly what it applies to, remains unsettled law which has been treated inconsistently at the trial level. As discussed more *infra*, this Court should not blindly follow trial court decisions that have neither addressed the plain meaning of the statute nor properly applied its language. Instead, this Court should apply the plain meaning of the statute and find that the Federal Foreclosure Bar does not apply.

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[6] While US Bank does not reference the *Staab* case in this context, Tyroshi will acknowledge that this Court's decision in that case allowed for the application of the Federal Foreclosure Bar, but critically, it did so with the acknowledgement that neither party "dispute[d] the application of the Federal Foreclosure Bar." *Staab v. Wells Fargo Bank, N.A.*, No. 23-CV-0492, 2024 WL 5081985, at *1 (D.C. Dec. 12, 2024). The Court thus did not have to rule on the applicability of the Federal Foreclosure Bar because it was a conceded issue, which is not the case here.

The primary trial court decision that US Bank relies on in support of its position is *Nationstar Mortg., LLC v. RFB Properties, LLC*, No. 20-CV-02697 (DLF), 2024 WL 4345850, at *4 (D.D.C. Sept. 30, 2024). The district court in this case acknowledged that the "property" at issue was a deed of trust but went on to hold held that the prohibitions in the Federal Foreclosure Bar not only protect Fannie Mae property but extend to all "involuntary liens" on that have been placed on "any property encumbered by a Fannie Mae lien." *Id.* This sweeping ruling fails to ground itself in the statutory text, and most importantly, is inconsistent with other rulings from the same court. Thus, the decision is not persuasive.

As an initial matter, the decision in *RFB Properties* cannot be reconciled with the plain language of the Federal Foreclosure Bar. As discussed *supra*, the statute protects Fannie Mae's lien interest in the Unit. *See* 12 U.S.C. § 4617(j)(3). The statute is also clear that this lien interest may not be "subject to" certain identified forms of collection activity such as attachment, as well as levy, foreclosure, and sale. *Id*. In this case (and in *RFB Properties*), Fannie Mae's lien interest was not "subject to" of any levy, foreclosure, or attachment. Based on a plain reading of the unambiguous statutory language, the trial court's decision in *RFB Properties* cannot be harmonized with the Federal Foreclosure Bar's usage of the term "subject."

The decision in *RFB Properties* is also inconsistent with several other rulings from the same court. While the court in *RFB Properties* held that the Federal

Foreclosure Bar prevented a condominium lien from attaching in the first place, two other decisions from different judges on the same court have held that the Federal Foreclosure Bar does not prevent a condominium lien from attaching, but rather, that it prevents a deed of trust from being extinguished. *NewRez, LLC v. Francis*, No. 22-CV-561 (APM), 2024 WL 4314016, at *5 (D.D.C. Sept. 11, 2024); *M&T Bank v. Brown*, No. CV 19-578 (JMC), 2022 WL 7003740, at *3 (D.D.C. Oct. 12, 2022). The aforementioned rulings cannot be reconciled with the ruling is *RFB Properties*, nor can those ruling be reconciled with the plain statutory language of the Federal Foreclosure Bar. *Compare id., with* 12 U.S.C. § 4617(j)(3). The trial court decisions that US Banks relies upon, and the analysis that underpins them, are not only inconsistent but they are directly at odds with one another.[7]

There are also significant problems with the ruling in *RFB Properties* that extend beyond the area of super-priority liens. The decision in *RFB Properties* would prohibit the attachment of **any** lien to a condominium in which Fannie Mae has a security interest. This means that state and local governments would be prohibited from imposing statutory liens on the property if the owner fails to pay property taxes, utilities, or administrative fines. *See* D.C. Code § 47-1303.04; D.C.

[7] The reality is that most of the decisions in the District of Columbia that address the applicability of the Federal Foreclosure Bar focus in on whether the statute preempts the District of Columbia super-priority lien statute. The trial court decisions that are generally relied on by US Bank do not actually analyze the statutory text in meaningful detail.

Code § 34-2407.02; D.C. Code § 42-3131.01. It would likewise render any other inferior deed of trust created by a second mortgage void, and in the process turn countless innocent lenders into unsecured creditors.[8] Needless to say, the ramifications of the decision from *RFB Properties* are significant and the unintended consequences from such a ruling could be disastrous.

The remaining trial court decisions that US Bank relies are not binding and not persuasive because they do not address the statutory arguments that Tyroshi is raising here. None of these decisions analyze the statutory text in any meaningful way, and each appears to take for granted the statute's applicability while considering whether concepts of federal preemption apply. The arguments at issue here are more nuanced and this Court should decline to follow inconsistent trial court opinions that do not directly address the issues raised on this appeal.

IV. US BANK'S UNCONSCIONABILITY DEFENSE WAS PRECLUDED AS A MATTER OF LAW.

US Bank's unconscionability claim is at odds with this Court's prior decisions on this precise issue. In *RFB Properties II, LLC v. Deutsche Bank Tr. Co. Americas, as Tr. for Residential Accredit Loan, Inc. Mortg. Asset-Backed Pass-Through Certificates, Series 2005-QA8*, 247 A.3d 689 (D.C. 2021), this Court held that the

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[8] In 2022 alone, Fannie Mae owned 2.6 million loans. *See* Fannie Mae, *About Us*, Www.FannieMae.com (Jan. 8, 2025), https://www.fanniemae.com/about-us#:~:text=Since%201938%2C%20Fannie%20Mae%20has,%2C%20refinancings%2C%20and%20rental%20units.

determination of whether a sales price is unconscionable must be made through the temporal lens at the time the transaction occurred. *Id.* at 696-98. The decision in *RFB Properties II, LLC*, and the subsequent ruling in *New Penn Fin., LLC v. Daniels*, 319 A.3d 997 (D.C. 2024), confirm that super priority lien foreclosures that occurred prior to *Chase Plaza* – as what occurred here – cannot be ruled unconscionable based solely on the price. *New Penn Fin., LLC, supra* at 1004. The reason for this is because this Court had yet to rule on the impact that a super-priority lien foreclosure would have on other lienholders and therefore, it was impossible for the buyer at a super-priority lien foreclosure sale to know what they were purchasing. *See id.*

This is the precise temporal context that was presented to the trial court. While US Bank argues that the Court considered a complete evidentiary record and found that Tyroshi did not rely on a representation that the property was being sold subject to the first deed of trust, that finding, while wrong, is beside the point. *See id.* As this Court acknowledged in *New Penn Fin., LLC*, it was impossible for Tyroshi to know what it was purchasing because *Chase Plaza* was not decided yet.[9] *Id.* None of the evidence offered at trial accounted for the fact that Tyroshi may have been purchasing a property that was subject to a mortgage that was in excess of $200,000.

[9] In fact, *Chase Plaza* was pending on appeal from a trial court decision finding that a super-priority lien did not extinguish a first deed of trust. Thus, the prevailing law at the time was that Tyroshi's purchase was subject to the first deed of trust and it was only after the purchase that it became apparent that the title that was purchased was free and clear of the first deed of trust.

Based on that consideration, as a matter of law, Tyroshi's purchase could not have been unconscionable.

V. US BANK CANNOT HAVE SUPERIOR TITLE AS A MATTER OF LAW

US Bank cannot have superior title as a matter of law because its title to the Unit is invalid for at least three reasons, each of which undermines the legal conclusions and factual findings that were made by the trial court. First, US Bank ignores the nature of the super-priority lien that was foreclosed upon, which extinguishes the Deed of Trust. *Chase Plaza Condo. Ass'n, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 175 (D.C. 2014). If the super-priority lien foreclosure was valid, as Tyroshi contends (*see supra*), it would have extinguished the Deed of Trust and consequently, the subsequent foreclosure would have been invalid because there would be no further interest in the Unit to foreclose upon.

Second, US Bank's position – and the decision of the trial court – ignores the fact that Tyroshi was an indispensable party to the second foreclosure action through which US Bank acquired its ownership interest. This Court has acknowledged that "[i]t is well settled…that a holder of an interest in real property is indispensable when a judgment could destroy or substantially impair the interest at issue." *EMC Mortg. Corp. v. Patton*, 64 A.3d 182, 188 (D.C. 2013) (collecting authorities to support this proposition). This Court reiterated this legal proposition only a few months ago in *Wonder Twins Holdings, LLC v. 450101 DC Hous. Tr.*, No. 23-CV-

0719, 2024 WL 4846685, at *7 (D.C. Nov. 21, 2024). Both US Bank and the trial court acknowledge that Tyroshi was never added as a party to the foreclosure proceeding, rendering US Bank's foreclosure purchase defective and invalid. Thus, US Bank does not have title to the Unit in the first place.

Moreover, any claim that Tyroshi had notice of the proceeding does not alter the analysis. Residential foreclosure actions require "strict compliance." This means that a party seeking to foreclose on a residential property must strictly adhere to all requirements relating to the foreclosure. *Rose v. Wells Fargo Bank, N.A.*, 73 A.3d 1047, 1053 (D.C. 2013). As such, US Bank cannot simply validate its foreclosure through a claim that Tyroshi was aware of the proceeding. Simply making a title holder "aware" of the proceeding, or merely putting them on notice, does not strictly comply with US Bank's statutory obligations in foreclosing on the Unit. D.C. Code § 42-815(c). As such, the US Bank's failure to strictly comply with its foreclosure obligations would render its purchase void.

CONCLUSION

The lower court made several legal errors in rendering its decision. Each of them alone is sufficient to warrant reversal and therefore, this Court should reverse the trial court's decision and remand with instructions to enter judgment in Tyroshi's favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2025, a copy of the foregoing was served on all counsel of record *via* the Court's e-filing system.

/s/ Ian G. Thomas
Ian G. Thomas