No. 23-CV-977

DISTRICT OF COLUMBIA
COURT OF APPEALS

TYROSHI INVESTMENTS, LLC
Appellant,

v.

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST,
Appellee.

On Appeal from the Superior Court for the
District of Columbia, Civil Division
Case No. 2020 CA 001727 B

BRIEF OF APPELLEE

December 18, 2024

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

In accordance with DC Court of Appeals Rule 28(a)(2), counsel of record for U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust certifies that:

The following listed parties appeared in this case:

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Jenkins Row Condominium Association	Defendant
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The Appellant in the instant matter is Tyroshi Investments, LLC ("Tyroshi"). The Appellee is U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank, as Trustee").

CORPORATE DISCLOSURE STATEMENT

Defendant U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank, as Trustee"), by its undersigned counsel and pursuant to Rule 26.1 of the Rules of the District of Columbia Court of Appeals, files this Corporate Disclosure Statement on behalf of U.S. Bank, as Trustee and states:

(a) Corporate Affiliation:

U.S. Bancorp is the parent company of U.S. Bank, as Trustee. No publicly held corporation owns 10% or more of U.S. Bancorp stock.

(b) Financial Interest in the Outcome of the Litigation:

U.S. Bank, as Trustee knows of no other corporation, unincorporated association, partnership, or other business entity, not a party to this case, who may have a "financial interest whatsoever in the outcome of this litigation."

U.S. Bank, as Trustee, reserves the right to supplement this Disclosure.

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I. ASSERTION OF JURISDICTION

This appeal arises from the Superior Court's: (1) March 22, 2021 Omnibus Order granting Defendant Jenkins Row Unit Owners Association's Motion to Dismiss, with prejudice[1]; and (2) October 24, 2023 Amended Order and Final Judgment following a bench trial setting forth findings of fact and conclusions of law and conveying the property located at Unit 366, 1391 Pennsylvania Avenue SE, Washington, D.C. 20003 ("Property") to U.S. Bank, as Trustee (the "Final Order").

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Superior Court correctly determined that a fifteen-year statute of limitations applies to U.S. Bank, as Trustee's claim to set aside the Condominium Foreclosure Sale because the claim relates to the recovery of lands.

2. Whether the Superior Court correctly determined that the Condominium Foreclosure Sale is void because Jenkins Row Unit Owners Association ("Jenkins Row") failed to obtain consent from the Federal National Mortgage Association ("Fannie Mae") as required by 12 U.S.C. § 4617(j)(3).

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[1] Tyroshi appealed the Dismissal Order on May 20, 2021, and this Court affirmed on March 8, 2023 (before Tyroshi commenced this appeal). *See Tyroshi Invs., LLC v. Jenkins Row Unit Owners' Ass'n*, 291 A.3d 1106 (D.C. 2023). Therefore, as explained below, the law of the case prohibits Tyroshi from reasserting the question of whether Jenkins Row should be a party to the instant suit. *See Lynn v. Lynn*, 617 A.2d 963, 969 (D.C. 1992). Nonetheless, Tyroshi failed to address the Dismissal Order in its brief and, therefore, waived its appeal of that order. *See Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived.").

3. Whether the Superior Court correctly determined that the sale price of the Property at the Condominium Foreclosure Sale was unconscionable because it was less than 3% of the lowest fair market value of the Property at the time of the sale.

4. Whether the Superior Court correctly held that the Tyroshi Deed was ineffective against U.S. Bank, as Trustee because: (a) U.S. Bank, as Trustee purchased the Property for $385,000 at a Judicial Foreclosure Sale that was ratified by the Superior Court while Tyroshi paid only $10,000 for the Property at the Condominium Foreclosure Sale; (b) U.S. Bank, as Trustee promptly recorded its deed without notice of the Tyroshi Deed; (c) Tyroshi knew about the Judicial Foreclosure Sale and was given notice of it but failed to intervene or assert ownership; (d) Tyroshi recorded the Tyroshi Deed a year and a half ***after*** U.S. Bank, as Trustee recorded the Trustee's Deed; (e) no one sought Fannie Mae's consent for the Condominium Foreclosure sale; (f) Tyroshi collected rents from tenants at the Property for at least three years but failed to pay any condominium assessments, taxes, or insurance while U.S. Bank, as Trustee had paid $58,899.70 in condominium assessments, taxes, and insurance; and (g) U.S. Bank, as Trustee was a creditor and a bona fide purchaser of the Property pursuant to D.C. § 42-401.

III. STATEMENT OF THE CASE

A. Introduction

Following a bench trial, the Superior Court made several key and supported factual findings that Tyroshi cannot overcome: (1) Fannie Mae owned the loan on the Property at the time of the Condominium Foreclosure Sale, yet the condominium association failed to obtain Fannie Mae's consent to foreclose; (2) Tyroshi purchased the Property at an unconscionably "low sale price"; (3) Tyroshi was aware of the Judicial Foreclosure Sale and failed to assert its ownership through intervention or otherwise; (4) following a judicial foreclosure sale of the Property, U.S. Bank, as Trustee purchased the Property for the fair market value of the Property; (5) U.S. Bank, as Trustee recorded its deed to the Property a year and a half ***before*** Tyroshi recorded its deed to the Property; and (6) Tyroshi has never paid any portion of condominium assessments, taxes, or insurance for the Property while U.S. Bank, as Trustee had paid $58,899.70 in assessments, property taxes, and insurance. JA 2090.

These findings of fact support the Superior Court's legal conclusions. ***First***, the Condominium Foreclosure Sale of the Property to Tyroshi is void because Jenkins Row failed to obtain Fannie Mae's consent to foreclose on the Property as required by the Federal Foreclosure Bar under the Housing Enterprise Regulatory Agency Act, 12 U.S.C. § 4617(j)(3) ("HERA"). ***Second***, U.S. Bank, as Trustee holds superior title to the Property, thereby making the Tyroshi Deed ineffective against

U.S. Bank, as Trustee, because: (a) U.S. Bank, as Trustee purchased the Property for $385,000 at a Judicial Foreclosure Sale that was ratified by the Superior Court while Tyroshi paid only $10,000 for the Property at the Condominium Foreclosure Sale; (b) U.S. Bank, as Trustee promptly recorded its deed without notice of the Tyroshi Deed; (c) Tyroshi knew about the Judicial Foreclosure Sale and was given notice of it but failed to intervene or assert ownership; (d) Tyroshi recorded the Tyroshi Deed a year and a half ***after*** U.S. Bank, as Trustee recorded the Trustee's Deed; (e) no one sought Fannie Mae's consent for the Condominium Foreclosure sale; (f) Tyroshi collected rents from tenants at the Property for at least three years but failed to pay any condominium assessments, taxes, or insurance while U.S. Bank, as Trustee had paid $58,899.70 in condominium assessments, taxes, and insurance; and (g) U.S. Bank, as Trustee was a creditor and a bona fide purchaser of the Property pursuant to D.C. § 42-401. ***Third***, the Tyroshi Deed is not effective against U.S. Bank, as Trustee because U.S. Bank, as Trustee was as a creditor and bona fide purchaser of the Property pursuant to D.C. § 42-401. ***Fourth*** and finally, the Condominium Foreclosure Sale is invalid on unconscionability grounds. Accordingly, U.S. Bank, as Trustee, is the legal owner of the Property.

The Superior Court's factual findings are supported by the evidence presented at trial and the Superior Court did not err in reaching any of the conclusions. This Court should affirm.

B. Factual Background

1. *Fannie Mae owned the loan secured by the Property.*

On or about September 28, 2007, Diana Gaines purchased the Property via a loan secured by a deed of trust executed in favor of First Savings Mortgage Corporation (the "Deed of Trust"). *See* JA 862; *see also* JA 2087. The Deed of Trust was recorded on October 5, 2007, as instrument number 2007128989 in the land records for the District of Columbia, and indicates that it is a "Fannie Mae/Freddie Mac UNIFORM Instrument." JA 883; *see also* JA 2087. The Deed of Trust names Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary, as the nominee for the lender and the lender's successors and assigns. JA 866; *see also* JA 2087. "MERS is . . . an entity that [i]s used in order to track the transfer of the mortgage." JA 1301. Although MERS stands "in [the] place of th[e] . . . lender," it is not actually the lender or owner of the loan. JA 1301:7-10. MERS "act[s] in a trustee-type capacity on behalf of the owner of this debt. In this case, at the time this loan was originated . . . the owner of this debt was Fannie Mae." JA 1555:21-1556:4.

Contemporaneous with the execution of the Deed of Trust, Ms. Gaines executed a promissory note in favor of First Savings Mortgage Corporation in the amount of $271,100.00 (the "Note") (together with the Deed of Trust, the "Mortgage"). JA 862; *see also* JA 865. Like the Deed of Trust, the Note indicates that it is a "Fannie Mae/Freddie Mac UNIFORM Instrument." JA 862. The last page

of the Note includes two endorsements. JA 863-864. The first, on the left, states, "WITHOUT RECOURSE PAY TO THE ORDER OF: WELLS FARGO BANK, N.A." JA 864-865. It is signed by Peggy Clift, Vice President of First Savings Mortgage Corporation, a Virginia Corporation. *Id.* The last page of the Note also includes the corporate seal of First Savings Mortgage Corporation. JA 865. The second endorsement, on the right, states, "WITHOUT RECOURSE PAY TO THE ORDER OF" and the payee is left blank. *Id.; see also* JA 2087. The second endorsement is signed "in blank" by Lori K. Venegonia, Vice President Loan Documentation of Wells Fargo Bank, N.A. JA 1353:7-7, JA 1353:13-16; JA 1354:7-9 ("I've seen that endorsement and that's a blank endorsement"); JA 1409:1-3 ("[T]he next endorsement is what's known in the industry as a blank endorsement. . . and that's done by Wells Fargo.").

On July 6, 2009, MERS, as nominee for First Savings Mortgage Corporation, assigned the Deed of Trust to Wells Fargo Bank, N.A. ("Wells Fargo") via a certificate of assignment ("Certificate of Assignment"). JA 884-85. The Certificate of Assignment was recorded on March 2, 2010, as instrument number 2010017455 in the land records for the District of Columbia. *See id.* As of the date of the execution of the Certificate of Assignment, Fannie Mae became the owner of the loan and Wells Fargo, as its attorney-in-fact and agent, became the servicer of the loan. JA 1314:13-1315:11. From 2011 through 2015, the loan associated with the

Property was coded "FNMA" in all mortgage servicing records, indicating that the loan was owned by Fannie Mae. *See* JA 1167, 1174, 1177, 1183, 1195-96, 1200-01; *see also* JA 1304:20-1314:7; JA.2087.

2. *The Property is governed by a condominium association.*

The Property is a condominium unit at Jenkins Row in Capitol Hill in southeast Washington, D.C. within the Jenkins Row Unit Owners' Association. *See* JA 886. The Property was, at all relevant times, governed by Jenkins Row's by-laws. *See id.* Jenkins Row Bylaws, which were recorded in the D.C. land records, state that any Jenkins Row assessment lien was subordinate to "liens of any first priority mortgage or deed of trust on such Unit Recorded prior to the due date of such assessment or the due date of the first installment payable on such assessment." JA 919. According to the Notice of Condominium Lien, Ms. Gaines failed to pay all assessments owed to Jenkins Row. *See* JA 936; JA 2088. Consequently, on March 7, 2014, Jenkins Row recorded a Notice of Condominium Lien as instrument number 2014020617 in the land records for the District of Columbia. JA 937; JA 2088. The Notice of Condominium Lien stated that the amount due to Jenkins Row was $4,792.04. JA 936; JA 2088.

3. *Tyroshi purchased the Property at the Condominium Foreclosure Sale for less than 3% of its fair market value.*

On April 29, 2014, Jenkins Row recorded a Notice of Foreclosure Sale of Condominium Unit for Assessments Due ("Notice of Condominium Foreclosure

Sale") as instrument number 2014037298 in the land records for the District of Columbia. JA 938-940; JA 2088. The Notice of Condominium Foreclosure Sale stated that a condominium foreclosure sale would take place on June 10, 2014 at 11:21 A.M. at the office of Alex Cooper Auctioneers, Inc., 5301 Wisconsin Avenue, N.W. #750, Washington, D.C. 20015 ("Condominium Foreclosure Sale"). *Id.* The Notice of Condominium Foreclosure Sale also stated that the unpaid assessments due totaled $15,151.74, and that the total amount due was $20,259.64, which included assessments, interest, late charges, and attorney's fees. *Id.* Both the Notice of Condominium Lien and the Notice of Condominium Foreclosure Sale were silent as to whether or not the purchaser at the Condominium Foreclosure Sale would take the Property subject to the first deed of trust. *See generally id.* Neither the Notice of Condominium Lien nor the Notice of Condominium Foreclosure Sale specified that Jenkins Row's foreclosure could extinguish Wells Fargo's interest in the Property. *Id.*

On June 10, 2014, Tyroshi purchased the Property for $10,000 at the Condominium Foreclosure Sale. JA 941-943; JA 2088. Jenkins Row conveyed the Property to Tyroshi via deed dated July 2, 2014. JA 162-164. Tyroshi, however, failed to record its deed at this time; instead, the Tyroshi Deed remained unrecorded for the next three years. JA 941-943 (dated May 28, 2015, recorded July 6, 2018); JA 2089.

4. *At the time of the Condominium Foreclosure Sale, Fannie Mae owned the loan on the Property.*

On June 10, 2014, First American Field Services conducted an inspection of the Property. JA 1154; JA 2088. This inspection was done pursuant to Fannie Mae Guidelines requiring visual inspections of Fannie Mae properties in which borrowers have defaulted on a loan. JA 1316:3-1. The invoice for the Property inspection, dated June 11, 2014, was submitted to Wells Fargo as the servicer of the loan. JA 1154. It identifies Fannie Mae as the "Investor" ("Investor: FNMA"), meaning that Wells Fargo was "acting on behalf of Fannie Mae as the owner of the loan at that time." *Id.*; JA 1318:13-18.

Following the Condominium Foreclosure Sale, Tyroshi's sole owner, Barrett Ware ("Mr. Ware"), ran a search of the Property's title and found information indicating that Fannie Mae had an interest in the Property. JA 1658:17-23, 1660:8-10 ("I believe it was Wells Fargo with Fannie Mae being a beneficiary or residual interest holder on the payment."). At the time of the Condominium Foreclosure Sale, Fannie Mae owned the Property while Wells Fargo was the servicer. JA 1410:1-4 (Fannie Mae owned the Property from 2009 through 2015); JA 2087 ("The Court holds, based upon a preponderance of the evidence at trial, that Fannie Mae owned the Property at the time of the condominium foreclosure sale.").

5. *Jenkins Row failed to obtain Fannie Mae's consent to foreclose on the Property.*

At trial, Tyroshi failed to present any evidence that Jenkins Row, or any other entity, sought or obtained Fannie Mae's consent to conduct the Condominium Foreclosure Sale. U.S. Bank, as Trustee's records of the servicing history of the loan secured by the Property does not contain any documentation of any party seeking or receiving, Fannie Mae's consent to conduct the Condominium Foreclosure Sale. JA 1330:23-1331:4. Accordingly, the Superior Court found that the Condominium Foreclosure Sale "did not receive the consent of Fannie Mae." JA 2092-93.

6. *U.S. Bank, As Trustee purchased the Property at the Judicial Foreclosure Sale and promptly recorded its deed.*

Following the Condominium Foreclosure Sale, Ms. Gaines defaulted on the Note, which led to Wells Fargo initiating foreclosure, first by appointing Substitute Trustees to carry out judicial foreclosure proceedings. JA 946-948; JA 2089. The Appointment of Substitute Trustees was recorded on March 6, 2015, as instrument number 2015020290 in the land records for the District of Columbia. JA 946-948. On May 28, 2015, through Substitute Trustees, Wells Fargo filed a Complaint for Judicial Foreclosure in the Superior Court of the District of Columbia captioned *Wells Fargo Bank, N.A. v. Diana L. Gaines*, Civil Action No. 2015 CA 003885 R(RP) (the "Judicial Foreclosure Action"). JA 950-960; JA 2089.

On September 25, 2015, Ms. Gaines' Mortgage was sold to LSF9 Master Participation Trust and U.S. Bank, as Trustee became trustee for LSF9. JA 961; JA 2089. On December 23, 2015, an Assignment of Mortgage/Deed of Trust was recorded as instrument number 2015129870 in the land records for the District of Columbia. JA 964-966 (signed December 17, 2015 and recorded December 23, 2015); JA.2089. This Assignment "grant[ed], assign[ed] and transfer[red] to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTCIPATION TRUST . . . all beneficial interest under that certain mortgage/Deed of Trust/Security Deed dated 09/28/2007 executed by DIANA L. GAINES" to MERS. JA 964. Thus, on February 19, 2016, the Superior Court substituted U.S. Bank, as Trustee as the plaintiff in the Judicial Foreclosure Action.

On August 1, 8, 15, and 22, 2016, an advertisement of the Judicial Foreclosure Sale ran in the Washington Post ("the Judicial Foreclosure Advertisement"). JA 1055. The Judicial Foreclosure Advertisement stated that a judicial foreclosure sale would take place by public auction on, August 30, 2016 at Harvey West Auctioneers, Inc. ("Judicial Foreclosure Sale") and that the Property would be sold by Trustee's Deed. *Id.*

U.S. Bank, as Trustee purchased the Property at the Judicial Foreclosure Sale for $385,000.00 and the sale was ratified on November 14, 2016. JA 2089. The Trustee's Deed was executed on December 19, 2016 and recorded the following day,

on December 20, 2016. JA 967-969. Tyroshi did not intervene in the Judicial Foreclosure Action, despite the foreclosure filings being mailed to Tyroshi's registered agent as listed with the District, and despite Tyroshi having notice of the sale and. JA 1579:6-10 (explaining that notices to Tyroshi were sent "to the registered agent as listed with the District of Columbia"); JA 1672:18-1673:6; JA 2089-90. In fact, Mr. Ware went to the Judicial Foreclosure Sale, made an announcement that he was the owner of the Property, but did nothing further to assert his purported ownership. JA 1635:9 ("I went to the sale."); JA 1635:23-1636:5.

7. *Tyroshi recorded its deed a year and a half after U.S. Bank, as Trustee, recorded its Trustee's Deed.*

Although the Tyroshi Deed is dated July 2, 2014, Tyroshi did not record its deed until four years later, on July 6, 2018, as instrument number 2018067518 among the land records for the District of Columbia. JA 941-943 (dated May 28, 2015, recorded July 6, 2018); JA 2089.

At the time Tyroshi purchased the Property and recorded its deed, its status as a limited liability company in the District of Columbia was revoked. *See* JA 970 (noting that Tyroshi did not file its biannual report for 2012 until June 12, 2014 and did not file its 2016 report until February 19, 2021); JA 973-974 (identifying Tyroshi on the "2016 DCRA Corporations Division Revocation List for Domestic and Foreign Entities").

8. *Tyroshi filed suit against Jenkins Row after Jenkins Row restricted Tyroshi's access to the Property and U.S. Bank, as Trustee intervened.*

In March 2020, Jenkins Row deactivated the key fobs to the Property that had been issued to Tyroshi. JA 1892. On March 11, 2020, Tyroshi filed an instant action against Jenkins Row. *Id.* On September 17, 2020 U.S. Bank, as Trustee filed its Intervenor Complaint against Tyroshi and Jenkins Row for (i) quiet title, (ii) declaratory judgment regarding the first foreclosure sale, (iii) declaratory judgment regarding D.C. Code § 42-401, (iv) judgment regarding the constitutionality of D.C. Code§ 42-1903.13, and (v) unjust enrichment. *See* JA 22.

9. *The Superior Court granted Jenkins Row's Motion to Dismiss and this Court affirmed that dismissal.*

On September 22, 2020, Jenkins Row filed a Motion to Dismiss Tyroshi's complaint, which the Superior Court granted on October 21, 2020. JA 2105; JA 2107. Following the Dismissal Order, Tyroshi filed a Motion to Vacate, Alter, or Amend the court's Order Granting Motion to Dismiss. JA 2109. The Superior Court denied that motion on April 29, 2021. JA 2122. On May 20, 2021, Tyroshi appealed both of those decisions, among others, and on March 8, 2023, this Court affirmed. *See Tyroshi Invs., LLC v. Jenkins Row Unit Owners' Ass'n*, 291 A.3d 1106 (D.C. 2023).

10. ***The Superior Court issued the Final Order holding that U.S. Bank, as Trustee's claims are timely; the Tyroshi Deed is ineffective against U.S. Bank, as Trustee; the Condominium Foreclosure Sale is invalid; and U.S. Bank, as Trustee is the legal owner of the Property.***

Following a bench trial, on October 24, 2023, the Superior Court issued a Memorandum Opinion and Order finding in favor of U.S. Bank, as Trustee on all claims and ordered that the case be closed. JA 4. That same day, U.S. Bank, as Trustee alerted the Court clerk to a typographical error in the order that resulted in the issuance of an amended order (*i.e.*, the Final Order). JA 4; JA 2086.

The Final Order states that:

> the condominium foreclosure sale of the condominium unit known as Unit 366, 1391 Pennsylvania Avenue, DE, Washington, D.C. 20003 (the "Property") to Tyroshi that was held on June 10, 2014 (the "Condominium Foreclosure Sale") is void because Jenkins Row failed to obtain Fannie Mae's consent to foreclosure on the Property as required by 12 U.S.C.§ 4617(j)(3)
>
> ***
>
> U.S. Bank, as Trustee holds superior title to the Property such that the deed through which Jenkins Row conveyed the Property to Tyroshi on July 2, 2014 (the "Tyroshi Deed") is not effective against U.S. Bank, as Trustee
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> ***
>
> the Tyroshi Deed is not effective against U.S. Bank, as Trustee, pursuant to D.C. Code § 42-401; [and]
>
> ***

U.S. Bank, as Trustee is entitled to a declaration that the Condominium Foreclosure Sale is invalid on unconscionability grounds.

JA 2101. In addition, the Final Order closed the trial court case. *Id.*

11. *Tyroshi appealed the Final Order and (for a second time) the Superior Court's March 22, 2021 Order dismissing Jenkins Row with prejudice.*

On November 14, 2023, Tyroshi filed its Notice of Appeal. *See* JA 2102. Tyroshi argues that the Superior Court failed to correctly assess the timeliness of U.S. Bank, as Trustee's claims and made legal errors in applying the Federal Foreclosure Bar and the relevant post-*Chase Plaza* jurisprudence.

IV. STANDARD OF REVIEW

This Court reviews questions of law de novo and findings of fact for clear error. *In re P.M.B.*, 293 A.3d 1103, 1109 (D.C. 2023) (citing *In re J.O.*, 176 A.3d 144, 153 (D.C. 2018)) ("Legal questions are reviewed de novo, but findings of fact are reviewed for clear error."). A trial court's decision regarding the applicable statute of limitation is reviewed de novo. *Govan v. SunTrust Bank*, 289 A.3d 681, 688 (D.C. 2023).

In reviewing the Superior Court's decision, this Court will assess whether the Superior Court's decision "provide[s] substantial reasoning that is based on correct legal principles and has a firm factual foundation in the record." *B.R.L.F. v. Sarceno Zuniga*, 200 A.3d 770, 775 (D.C. 2019). When substantial evidence supports the findings of the trial court the Court of Appeals has no power to substitute its

judgment for that of the trial court. *See Brooks v. D.C.*, 31 A.2d 657, 657 (D.C. 1943) ("There was substantial evidence to support the findings of the trial court and under such circumstances this court has no power to substitute its judgment for that of the trial court.").

V. SUMMARY OF THE ARGUMENT

A. The Superior Court correctly held that U.S. Bank, as Trustee's claims against Tyroshi were subject to a fifteen-year statute of limitations under D.C. Code § 12-301(a)(1), because U.S. Bank, as Trustee's claims relate to the recovery of lands.

B. The Superior Court correctly invalidated the Condominium Foreclosure Sale without Jenkins Row being a party to the case because: (1) Tyroshi waived this issue; (2) this Court affirmed the dismissal of Jenkins Row from this lawsuit, thereby making the dismissal the law of the case; and (3) Jenkins Row was not a necessary party as it has never claimed ownership of the Property.

C. The Superior Court correctly applied the Federal Foreclosure bar to invalidate the Condominium Foreclosure Sale because: (1) U.S. Bank, as Trustee's claims encompassed its Federal Foreclosure Bar argument; (2) U.S. Bank, as Trustee had standing to assert the Federal Foreclosure Bar based on its servicing relationship with Fannie Mae; and (3) the Federal Foreclosure Bar applies.

D. The Superior Court correctly held that Tyroshi purchased the Property for an unconscionably low sale price because Tyroshi's purchase price was less than 3% of the lowest fair market value of the Property and "evidence presented by [U.S. Bank, as Trustee was] . . . more compelling as to value" of the Property than testimony from Tyroshi (through Mr. Ware). JA 2093.

E. The Superior Court correctly held that U.S. Bank, as Trustee holds superior title to the Property because: (1) U.S. Bank, as Trustee purchased the Property for $385,000 at a Judicial Foreclosure Sale that was ratified by the Superior Court while Tyroshi paid only $10,000 for the Property at the Condominium Foreclosure Sale; (2) U.S. Bank, as Trustee promptly recorded its deed without notice of the Tyroshi Deed; (3) Tyroshi knew about the Judicial Foreclosure Sale and was given notice of it but failed to intervene or assert ownership; (4) Tyroshi recorded the Tyroshi Deed a year and a half ***after*** U.S. Bank, as Trustee recorded the Trustee's Deed; (5) no one sought Fannie Mae's consent for the Condominium Foreclosure sale; (6) Tyroshi collected rents from the Property for at least three years but failed to pay any condominium assessments, taxes, or insurance for the Property while U.S. Bank, as Trustee had paid $58,899.70 in condominium assessments, taxes, and insurance for the Property; and (7) U.S. Bank, as Trustee was a creditor and a bona fide purchaser of the Property pursuant to D.C. §42-401.

In sum, the Superior Court correctly held that U.S. Bank, as Trustee is the legal owner of the Property. Each of these legal conclusions constitute separate grounds upon which the Superior Court held that U.S. Bank, as Trustee is the owner of the Property, and upon which this Court may affirm.

VI. ARGUMENT

A. U.S. Bank, As Trustee's Claims Were Timely Filed Within The Fifteen-Year Statute Of Limitation.

The Superior Court correctly concluded that Section 12-301(a)(1) of the D.C. Code's fifteen-year statute of limitations applies to U.S. Bank, as Trustee's claims. Actions "for the recovery of lands, tenements, or hereditaments" are subject to a fifteen-year statute of limitations. D.C. Code. § 12-301(a)(1). Quiet title actions are actions for the recovery of lands and are, therefore, subject to a fifteen-year statute of limitations. *See Lancaster v. Fox*, 72 F. Supp. 3d 319, 325 (D.D.C. 2014).

For example, in *Lancaster,* an investor who purportedly bought the subject property from a defaulting homeowner brought a quiet title action against various defendants who had any potential interest in the property. *Id*. The defendants moved to dismiss, arguing that the investor's quiet title claim was time barred under D.C.'s catchall three-year statute of limitations. *Id.* The court denied the motion, reasoning, in relevant part, that the plaintiff "sue[d] to quiet title, an action that, at least in some part, seeks 'the recovery of lands.' Were he successful in voiding the deed of trust,

he would thereby recover rights to the underlying property." *Id.* The 15-year statute of limitations under Section 12-301(a)(1) applied. *Id.*

Similarly, here, U.S. Bank, as Trustee's claims are timely because U.S. Bank, as Trustee seeks quiet title to the Property, a claim relating to the recovery of lands and therefore subject to a fifteen-year statute of limitations. JA 2090. Tyroshi argues that a claim to set aside a foreclosure is subject to a three-year statute of limitations because D.C.'s three-year catchall limitations period, D.C. Code § 12-301(a)(8), "applies to any action in which no other limitations period is explicitly specified." *See* Appellant's Br. at 19 (citation omitted). But here, a limitations period is explicitly specified. Subsection (a)(1) states that a fifteen-year limitations period applies to claims for the recovery of land which is exactly what U.S. Bank, as Trustee's claims are. *See* D.C. Code. § 12-301(a)(1).

In support of its argument, Tyroshi cites to a host of inapplicable foreclosure cases. *See* Appellant's Br. at 19-20. But this is not a foreclosure case. This case began on March 11, 2020 when Tyroshi sued Jenkins Row to access the Property. JA 29. U.S. Bank, as Trustee then intervened. JA 41; JA 201. U.S. Bank, as Trustee had already judicially foreclosed on the Property years earlier and recorded its Trustee's Deed on December 20, 2016. JA 967-969. It paid all of the assessments, property taxes, and insurance associated with the Property, amounting to $58,899.70 by the time of trial. JA 2090. In contrast, Tyroshi, which had never paid a cent for the

assessments, property taxes, and insurance associated with the Property, did not record the Tyroshi Deed until two years after the Trustee's Deed. JA 941-943 (dated May 28, 2015, recorded July 6, 2018). Accordingly, U.S. Bank, as Trustee sought to obtain quiet title, *i.e.*, a declaration of ownership in light of Tyroshi's requests to access the Property. JA 41; JA 59. None of the cases Tyroshi cited stand for the proposition that the fifteen-year statute of limitations does not apply to quiet title actions.

Tyroshi also argues that "any claim under the Federal Foreclosure Bar is also time-barred" because a six-year statute of limitations applies to Federal Foreclosure Bar claims and, according to Tyroshi, U.S. Bank, as Trustee brought its claims a few months after the six-year period concluded. *See* Appellant's Br. at 22-23.[2] As a preliminary matter, although Tyroshi argued below that U.S. Bank, as Trustee did not properly plead the Federal Foreclosure Bar, Tyroshi failed to argue that U.S. Bank, as Trustee's Federal Foreclosure Bar argument was untimely and, therefore, waived its right to challenge the timeliness of that argument. *See* JA 849-51; *see Gillespie v. Washington*, 395 A.2d 18, 21 (D.C. 1978) ("It is a well-established rule that a party who fails to raise an issue at trial generally waives the right to raise that issue on appeal.").

[2] Tyroshi contends that the statute of limitations began to run on April 29, 2014. Appellant's Br. at 20-22.

Regardless, U.S. Bank, as Trustee did not bring a claim under the Federal Foreclosure Bar and is therefore not subject to the six-year limitations period. JA 59. Instead, as the Superior Court concluded, U.S. Bank, as Trustee used the Federal Foreclosure Bar to bolster its quiet title claim. JA 2093. Indeed, U.S. Bank, as Trustee made several arguments in support of its quiet title claim (*e.g.*, unconscionability, failure to timely record under D.C. Code § 42-401, failure to pay assessments, property taxes, and insurance) and the Federal Foreclosure Bar was just one of those arguments. In sum, the Superior Court applied the correct statute of limitations and U.S. Bank, as Trustee's claims are timely.

B. Tyroshi Waived Its Right To Challenge Jenkins Row's Absence From The Case And, In Any Event, Jenkins Row's Dismissal Is The Law Of The Case, And Jenkins Row Was Not An Indispensable Party To The Action Because It Has Never Claimed Ownership Of The Property.

1. *Tyroshi waived its right to challenge Jenkins Row's absence from the case.*

"It is a well-established rule that a party who fails to raise an issue at trial generally waives the right to raise that issue on appeal." *Gillespie*, 395 A.2d at 21 (precluding appellant from raising arguments based on admiralty law on appeal because appellant did not raise any arguments related to admiralty law at trial). Tyroshi argues that the Superior Court should not have invalidated the Condominium Foreclosure Sale because Jenkins Row was part of that sale but was "absen[t] . . . from the case." But, heading into trial several years after Jenkins Row's dismissal

from the case, Tyroshi failed to object or raise Jenkins Row's absence as an issue in the case. JA 718-735 (Tyroshi failing to raise Jenkins Row's absence in the Joint Pretrial Statement). This appeal is the first time Tyroshi has raised the issue of Jenkins Row's absence. Tyroshi thus waived its right to argue that Jenkins Row's absence precludes the entry of a valid final judgment.

2. *This Court already affirmed the dismissal of Jenkins Row from the instant suit; therefore, the law of the case doctrine bars Tyroshi from relitigating that issue.*

Tyroshi has already litigated the issue of whether Jenkins Row should be a party to the case and lost at both the trial court level and on appeal; as a matter of law, Tyroshi cannot relitigate this issue. When this Court issues a holding, the holding becomes the law of the case and may not be challenged or raised again. *See Lynn*, 617 A.2d at 969; *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980).

In *Lynn*, for example, a father and son filed a complaint for sale in lieu of partition and for an accounting. 617 A.2d at 969. Following dismissal of certain claims, the defendant, Peter Lynn, appealed. *Id*. at 968. This Court dismissed the appeal because Peter Lynn failed to comply with the Court's appellate rules. *Id*. The case proceeded on the remaining claims. After the trial court issued its summary judgment order, Peter Lynn appealed again, re-hashing his prior argument that he was denied procedural due process in proceedings in the Superior Court. *Id.* This Court dismissed Peter Lynn's second appeal, "conclud[ing] that dismissal of the

[first] appeal made final the order for partial summary judgment and barred further litigation . . . .” *Id.* at 966, 968. This Court explained that “[w]hen th[e] [first] appeal was dismissed . . . , that dismissal finally concluded appellant’s right to challenge the order subsequently, and the judgment became final as to appellant upon disposition of the appeal” and that the “‘law of the case’ principle precluded reopening the question.” *Id.* at 969.

Similarly, here, Tyroshi is foreclosed from arguing that the Final Order should be reversed because Jenkins Row was an absent but indispensable party since Jenkins Row’s dismissal is law of the case. On October 21, 2020, the Superior Court dismissed all claims against Jenkins Row. JA 2107. Tyroshi appealed and on March 8, 2023, this Court affirmed the Superior Court’s Dismissal Order. *See Tyroshi Invs., LLC*, 291 A.3d at 1106. That affirmance is law of the case on the issue of whether Jenkins Row’s participation in the instant litigation. Tyroshi cannot relitigate this issue.

3. *Jenkins Row did not need to be joined in the proceedings invalidating the Condominium Foreclosure Sale.*

In any event, Jenkins Row was not an indispensable party. “Joinder of necessary parties is governed by Rule 19, which makes it clear that questions of compulsory joinder are to be resolved on the basis of practical considerations.” *Raskauskas v. Temple Realty Co.*, 589 A.2d 17, 20 (D.C. 1991). To determine whether a party is indispensable to litigation, courts consider whether it can “accord

complete relief among existing parties," or if "the missing party 'claims an interest relating to the subject of the action' and disposing of the action in their absence may 'impair or impede [their] ability to protect [their] interest' or 'leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.'" *Staab v. Wells Fargo Bank, N.A.*, -- A.3d --, No. 23-CV-0492, 2024 WL 5081985, at *5 (D.C. Dec. 12, 2024) (citing Super. Ct. Civ. R. 19(1)(1)).

Staab is directly on point. *Id*. This Court held that a condominium association was not a necessary party in a case, like this one, involving ownership of a condominium unit. *Id.* Wells Fargo initiated a judicial foreclosure action against the original owner of the unit and Sarah Staab, the purchaser of the unit at a condominium foreclosure sale. *Id.* The Superior Court concluded that the sale of the unit was barred by the Federal Foreclosure Bar, and was thus void, and granted summary judgment to Wells Fargo Bank on its claims for judicial foreclosure, declaratory judgment, and quiet title. *Id.* Staab appealed, arguing among other things, that the Superior Court abused its discretion by not joining the condominium association as an indispensable party. *Id.* This Court rejected Staab's argument, reasoning that "[t]he Superior Court was able to grant the relief Wells Fargo requested—a declaration that Ms. Staab's purchase of the property and deed were void "ab initio" and Wells Fargo was entitled to judicial foreclosure—without ordering equitable or monetary relief against the Residential Association." *Id.* This

Court also explained that Ms. Staab had not demonstrated that the condominium association claimed any interest in the related litigation and was not situated in such a position that disposing of the action in its absence might impede its ability to protect its interests or leave an existing party subject to inconsistent obligations. *Id*.; *see also Reverse Mortg. Sols., Inc. v. Moore*, Jr., No. 2014-CA-07660-R(RP), 2023 WL 3975088, at *6 (D.C. Super. Ct. June 7, 2023) ("Defendant Liu's argument that the foreclosure sale cannot be invalidated without joining the Condominium Association is without merit. . . . [T]he Condominium Association is not an indispensable party under Rule 19 and the foreclosure sale can be invalidated.").

Here, Jenkins Row was not an indispensable party because Jenkins Row has no interest in the issues or the Property. The crux of the parties' dispute, and the subject of the Final Order, is the rightful ownership of the Property. JA 2087 ("This action involves a dispute as to the ownership of condominium unit located at 1931 Pennsylvania Ave, SE, Unit 366, Washington, D.C. 20003."). That dispute is exclusively between U.S. Bank, as Trustee and Tyroshi. Jenkins Row is merely the condominium association in which the Property is located. Jenkins Row has never claimed any ownership over the Property.[3]

[3] To the extent that Tyroshi believed that testimony from Jenkins Row was essential to determining the rightful owner, Tyroshi had ample opportunity to subpoena Jenkins Row as a witness at trial (in fact naming a Jenkins Row as a trial witness), but ultimately chose not to do so.

B. The Superior Court Correctly Held That The Condominium Foreclosure Sale Is Void Under The Federal Foreclosure Bar.

The Superior Court heard and considered all the evidence submitted at trial and determined that Fannie Mae owned the loan secured by the Property at the time of the Condominium Foreclosure Sale. JA 2091. Tyroshi has not pointed to any evidence controverting this factual finding, nor has it argued that this factual finding is contrary to the weight of the evidence. Consequently, Tyroshi's argument here are all technical: (1) U.S. Bank, as Trustee did not properly plead the Federal Foreclosure Bar, (2) U.S. Bank, as Trustee does not have standing to assert the Federal Foreclosure Bar, and (3) the Federal Foreclosure Bar does not apply as a matter of law. Tyroshi is wrong on all three fronts.

1. *The Superior Court correctly held that U.S. Bank, as Trustee's Federal Foreclosure Bar argument was encompassed in its claims for quiet title and declaratory judgment.*

This Court construes pleadings "to do substantial justice." *See Jaswant Sawhney Irrevocable Tr., Inc. v. D.C.*, 236 A.3d 401, 406 (D.C. 2020). This rule has been interpreted to reflect "a preference for the resolution of disputes on the merits, not on technicalities of pleading." *See Briggs v. Israel Baptist Church*, 933 A.2d 301, 304 (D.C. 2007) (quoting *Whitener v. Washington Metro. Area Transit Auth.*, 505 A.2d 457, 458 (D.C. 1986). A complaint "need not pin plaintiff's claim for relief to a precise legal theory," nor must a plaintiff offer an "exposition of his legal

argument." *Skinner v. Switzer*, 562 U.S. 521, 530 (2011).[4] A "complaint relates back where 'the initial complaint put the defendant on notice that a certain range of matters was in controversy and the amended complaint falls within that range.'" *Hartford Accident & Indem. Co. v. D.C.*, 441 A.2d 969, 972 (D.C. 1982).

Here, the Superior Court correctly held that U.S. Bank, as Trustee's claim for quiet title necessarily encompasses arguments under the Federal Foreclosure Bar. Indeed, courts hearing Federal Foreclosure Bar arguments have repeatedly permitted mortgage servicers to raise these arguments without requiring that the statute be explicitly pled. *See NewRez, LLC v. Francis*, No. 22-CV-561 (APM), 2024 WL 4314016, at *4 (D.D.C. Sept. 11, 2024); *Moore*, 2023 WL 3975088, at *3.

For example, in *Francis*, plaintiff NewRez serviced the mortgage loan secured by a condominium unit and filed suit for declaratory judgment that a condominium foreclosure sale did not extinguish Fannie Mae's deed of trust, quiet title, and judicial foreclosure. 2024 WL 4314016, at *1, 4. NewRez did not raise the Federal Foreclosure Bar as a separate count or claim; rather, it raised the statute to support its declaratory judgment and quiet title claims. *Id.* at *5. NewRez moved for

[4] Superior Court Rule 8 is modeled after Federal Rule of Civil Procedure 8; accordingly, this Court looks to federal cases interpreting the federal rule. *Tingling-Clemmons v. D.C.*, 133 A.3d 241, 246 (D.C. 2016) (citing U.S. Supreme Court authorities for D.C. pleading standards); *see Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 543 (D.C. 2011) ("The Superior Court has not prescribed or adopted any rule that modifies Federal Rule 8(a).").

summary judgment on each of its claims, which the trial court granted. *Id.* at *9. In granting the motion, the court explained that plaintiff's claims for declaratory judgment and quiet title were "premised on federal preemption—namely, that the Federal Foreclosure Bar preempts the D.C. Condominium Act to the extent that Act permits a foreclosure sale to extinguish Fannie Mae or Freddie Mac's interest in a property without the FHFA's consent." *Id.* *4. The court also explained that "[o]n its face, the Federal Foreclosure Bar prohibits the involuntary extinguishment of Fannie Mae and Freddie Mac's property interests via foreclosure." *Id.* at *5. It was irrelevant that NewRez did not specifically plead the Federal Foreclosure Bar in a separate count and the court granted summary judgment to NewRez.

Similarly, in *Moore*, the Superior Court granted summary judgment to the mortgage servicer, holding that a complaint seeking judicial foreclosure placed the validity of an earlier condominium foreclosure sale and the Federal Foreclosure Bar within "a certain range of matters." 2023 WL 3975088, at *3-4. The Superior Court granted the mortgage servicer's motion for summary judgment, explaining that "a complaint "need not pin plaintiff's claim for relief to a precise legal theory," nor must a plaintiff offer an "exposition of his legal argument." *Id.* (citing *Skinner,* 562 U.S. at 530 and *Tingling-Clemmons*, 133 A.3d at 246). The Superior Court also explained that, by asserting the judicial foreclosure suit, naming the purchasers from the condominium foreclosure sale as defendants in the suit, and alleging that the

purchasers held title based on an invalid sale, plaintiff had placed the sale "within a certain range of matters" and that accordingly the Federal Foreclosure Bar legal theory related back to the original complaint. *Id.* at *3.

As in *Francis* and *Moore*, here, the Superior Court correctly held that: (1) "[t]he claims and allegations set forth in the Intervenor Complaint encompasse[d] th[e] argument that challenges the validity of the foreclosure sale" and the Federal Foreclosure Bar argument merely "further[ed] U.S. Bank[, as Trustee]'s Complaint and claims for quiet title and a declaration that the Condominium Foreclosure Sale was invalid;" and (2) "[s]uch a theory was not required to be directly plead pursuant to Rule 8(8) and in fact, could not be plead, as this issue was not ruled upon until at least 2022 [when the D.C. federal district court issued its opinion in *M&T Bank v. Brown*, 2022 U.S. Dist. LEXIS 186688, at *9 (D.D.C. Oct. 12, 2022)]." JA 2092.

Moreover, upholding the Superior Court's decision to permit the argument is required to do substantial justice. The Superior Court did "not find that such an argument prejudices Tyroshi since Tyroshi's representative testified that he knew of Fannie Mae's involvement and interest in this Property following the Condominium Foreclosure Sale and still chose not to pursue discovery." *Id.*; JA 1660:8-10 ("I believe it was Wells Fargo with Fannie Mae being a beneficiary or residual interest holder on the payment."). Because the Federal Foreclosure Bar argument is relevant to a proper decision on the merits of the case and excluding the argument would

result in a ruling based on a technicality, this Court must uphold the Superior Court's decision to permit the Federal Foreclosure Bar argument.

2. *U.S. Bank, as Trustee has standing to assert the Federal Foreclosure Bar.*

Because U.S. Bank, as Trustee did not raise the Federal Foreclosure Bar as a standalone claim (but rather an argument to support its quiet title claim), Tyroshi's lack of standing argument is a red herring and should be rejected. U.S. Bank, as Trustee, indisputably had standing to bring its quiet title claim. Moreover, at trial, Tyroshi failed to object to any questions relating to Fannie Mae's ownership. JA 2092 ("At trial, Tyroshi did not object to questioning or testimony pertaining to Fannie Mae and had an opportunity to cross examine U.S. Bank's witnesses."). Thus, Tyroshi has waived its challenge to the U.S. Bank, as Trustee's assertion of the Federal Foreclosure Bar as support for its quiet title claim. *Gillespie*, 395 A.2d at 21.

Nevertheless, courts addressing whether third-party plaintiffs have standing to assert the Federal Foreclosure Bar have consistently answered in the affirmative. *See Nationstar Mortg. LLC v. Saticoy Bay LLC, Series 9229 Millikan Ave.,* 996 F.3d 950, 955 (9th Cir. 2021); *JP Morgan Chase Bank, N.A. v. LVBP Inc.*, No. 216CV02282RFBDJA, 2020 WL 515832, at *3 (D. Nev. Jan. 30, 2020). In *Saticoy Bay LLC*, for example, the Ninth Circuit concluded that Nationstar as the loan servicer could assert the Federal Foreclosure Bar on behalf of Fannie Mae. 996 F.3d at 954. The servicing relationship Nationstar had with Fannie Mae along with "the

authority Fannie Mae delegates to its loan servicers to protect Fannie Mae's mortgage loans was more than sufficient to establish that Nationstar was Fannie Mae's loan servicer and had the authority to assert the Federal Foreclosure Bar." *Id.* at 955.

While U.S. Bank, as Trustee has not found a case specifically dealing with a subsequent loan owner that purchased a loan from Fannie Mae raising the Federal Foreclosure Bar, it is blackletter law in the District of Columbia that the transfer of a deed of trust (here, from Fannie Mae to LSF9) "vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course. . . ." D.C. Code § 28:3-203; *Duffy v. Bank of Am., N.A.*, 13 F. Supp. 3d 57, 61 (D.D.C. 2014).

U.S. Bank, as Trustee stepped in the shoes of Fannie Mae when the loan secured by the Property was securitized, Fannie Mae sold it to LSF9, and the Deed of Trust was assigned to U.S. Bank, as Trustee. JA 2089 ("The loan was subsequently sold to LSF9 Master Participation Trust ("LSF9") and U.S. Bank[, as Trustee] and Caliber Home Loans, Inc. ("Caliber") became the Trustee and servicer of the loan for LSF9 respectively."). As part of the sale of the loan, Wells Fargo, as servicer for Fannie Mae, executed an Assignment of Mortgage/Deed of Trust through which Wells Fargo "grant[ed], assign[ed] and transfer[red] to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTCIPATION TRUST . . . all beneficial

interest under that certain mortgage/Deed of Trust/Security Deed dated 09/28/2007 executed by DIANA L. GAINES" to MERS. JA 964. In other words, by LSF9's purchase of the loan, U.S. Bank, as Trustee obtained all rights and obligations associated with the loan as set forth in the Deed of Trust. Accordingly, Fannie Mae's ability to enforce the ***validity*** of the Deed of Trust—which was not wiped out by the Condominium Foreclosure Sale because Fannie Mae never consented to such a sale—passed to U.S. Bank, as Trustee with LSF9's purchase of the loan and the assignment of the Deed of Trust to U.S. Bank, as Trustee.

3. *The Federal Foreclosure Bar applies and voids the Condominium Foreclosure Sale.*

Courts have uniformly applied the Federal Foreclosure Bar to condominium units securing loans owned by Fannie Mae or Freddie Mac. *See Nationstar Mortg. LLC v. RFB Props., LLC*, No. 20-cv-02697, -- F. Supp. 3d --, 2024 WL 4345850, at *4 (D.D.C. Sept. 30, 2024) ("The attachment of COA's super-priority lien and its foreclosure sale without FHFA's consent were unlawful."); *Nationstar Mortg. LLC v. Berg*, No. 2015-CA-002471-R(RP), 2024 WL 4836920, at *6 (D.C. Super. Nov. 19, 2024) (the condominium foreclosure sale "was conducted in contravention of 12 U.S.C. § 4617(j)(3) and is, therefore, void ab initio as a matter of law."); *Brown*, 2022 WL 7003740, at *3 (applying the Federal Foreclosure Bar statute in a dispute between a condominium owners association and mortgage servicer M&T Bank).

For example, in *RFB Properties*, the federal court rejected Tyroshi's exact argument here—that the Federal Foreclosure Bar does not apply because the condominium at issue was not a Fannie Mae "property." 2024 WL 4345850, at *3-5. The Federal Foreclosure Bar provides that "[n]o property of the [FHFA] shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the [FHFA]." 12 U.S.C. § 4617(j)(3). The term "property" encompasses "property interests more broadly, including mortgage liens and loans as well as fee interests." *Id*. at *3 (citing *Brown*, 2022 WL 7003740, at *2; *Moore*, 2023 WL 3975088, at *4–7; and *Simon v. Cebrick*, 53 F.3d 17, 21 (3d Cir. 1995)). Because the condominium unit at issue in that case secured a loan owned by Fannie Mae, the federal court held that the condominium foreclosure sale, conducted without Fannie Mae's consent, was unlawful and ineffective to extinguish Fannie Mae's interest. *Id*. at *3-4.

Likewise, in *Berg*, the Superior Court held that the Federal Foreclosure Bar preempted any state law permitting a condominium association's unilateral foreclosure sale to extinguish Fannie Mae's secured first deed of trust. 2024 WL 4836920, at *3. Like Tyroshi, the condominium foreclosure purchaser argued that "property" as used in the Federal Foreclosure Bar statute only encompassed real property, that Fannie Mae did not own the real property at issue in the suit, and that therefore, the Federal Foreclosure Bar did not apply. *Id.* The Superior Court rejected this argument, concluding that Fannie Mae "property" covered "property interests

more broadly, including mortgage liens and loans as well as fee interests." The court also concluded that "[i]t is undisputed that Fannie Mae owned the Property deed of trust upon being placed into conservatorship, and federal courts have consistently held that Fannie Mae's mortgage liens constitute conservatorship property protected under the Federal Foreclosure Bar." *Id.* at *3.

Here, as in the two Nationstar cases, the Federal Foreclosure Bar applies to the Property, which secured Fannie Mae's Deed of Trust. Like the loans in those cases, here, the loan was owned by Fannie Mae at the time of the Condominium Foreclosure Sale, and then transferred to a trust for which U.S. Bank, as Trustee served as Trustee. That Fannie Mae never owned the Property itself is irrelevant since the Federal Foreclosure Bar applies where Fannie Mae has any kind of property interest, regardless of legal ownership of the subject condominium. Tyroshi fails to cite a single case in which its statutory construction argument has been accepted by any court. Instead, numerous courts have explicitly rejected it. Accordingly, the Superior Court's correctly concluded that the Condominium Foreclosure Sale is void.

C. The Superior Court Correctly Held That Tyroshi Purchased The Property For aAn Unconscionably Low Purchase Price.

The Superior Court correctly held that the Property was sold for an unconscionably low sale price. This Court assesses the unconscionability of a property's sale price at the time the foreclosure sale occurs. *RFB Props. II, LLC v.*

Deutsche Bank Tr. Co. Ams., 247 A.3d 689, 696 (D.C. 2021). To prevail on an unconscionability claim based on low sale price, "the challenger to the sale must prove that the sale price 'was so grossly inadequate as to shock the conscience ... and raise a presumption of fraud.'" *Id.* (citing *Nat'l Life Ins. Co. v. Silverman*, 454 F.2d 899, 916 (D.C. Cir. 1971). Under the Restatement (Third) of Property (Mortgages) § 8.3 (1997), "[t]he standard by which gross inadequacy' is measured is the fair market value of the real estate." *Id.* cmt. B. "[A] court is warranted in invalidating a sale where the price is less than 20 percent of fair market value . . . ." *Id.*

In *RFB Properties v. Deutsche Bank*—a decision upon which Tyroshi relies—RFB brought a quiet title suit against mortgage assignee Deutsche Bank seeking a declaratory judgment declaring that a foreclosure sale extinguished mortgage assignee's first deed of trust. 247 A.3d at 691. Deutsche Bank moved for summary judgment, arguing that the $53,000 purchase price (approximately ten percent of the property's asserted value) was an unconscionably low purchase price. *Id.* at 693. The Superior Court granted Deutsche Bank's motion for summary judgment, but this Court reversed. *Id*. This Court clarified that the Superior Court should have determined whether the sale was unconscionable based on "the circumstances as they existed at the time the contract was entered into." *Id.* at 696. RFB purchased the property for $53,000 and at the time, there was an outstanding mortgage totaling

$505,115.31. *Id.* The Court held that "viewed through the proper temporal lens, payment of [the $53,000] should have been assessed at the time . . . the property appeared to be encumbered by a substantial mortgage lien" and that because of the mortgage, the purchase price "was, in effect, approximately $550,000." *Id.* at 697.

Tyroshi relies on *RFB Properties* in arguing that the price for which it paid for the Property was not unconscionable. While this Court did not believe the summary judgment record was sufficient and thus remanded *RFB Properties* back to the trial court to look at the circumstances of the condominium foreclosure sale with a temporal lens, here, the circumstances surrounding the sale was fully developed at trial, where the Superior Court made specific factual findings. Significantly, the Tyroshi Deed, which is the document Tyroshi primarily relies upon to establish its ownership over the Property, does ***not*** state that it is subject to the first deed of trust, or is otherwise subordinate to any liens. The Superior Court listened to Mr. Ware's testimony at trial and found that Tyroshi did ***not*** rely on the "sold subject to a deed of trust" language in the advertisement of the Condominium Foreclosure Sale when it purchased the property. JA 165:15-24 (explaining that he went to the Foreclosure Sale and told everyone that "this property was previously sold. I'm the owner. It came from a superior lien."). Although Mr. Ware testified at length during trial, not once did he say that he actually believed he purchased the Property at the June 10, 2014 Condominium Foreclosure Sale on behalf of Tyroshi

subject to the first Deed of Trust. *See id.* In addition, the Superior Court found that "Tyroshi purchased the Property for a mere fraction of its value and for years, collected rental payments through said Property without paying assessments, taxes, and insurance." JA 2094. In other words, the Superior Court found that, in bidding $10,000 at the Condominium Foreclosure Sale, Mr. Ware did not believe that Tyroshi would take on the defaulting homeowner's mortgage payments or any payments relating to the Property. These are factual findings that cannot be set aside.

Consequently, equity required that the Condominium Foreclosure Sale be set aside. The purchase price that Tyroshi paid at the Condominium Foreclosure Sale was so grossly low considering the fair market price at the time of that sale, as to shock the conscience such that the price alone suggests fraud or misconduct. Indeed, the percentage of the sale price compared to the Property's fair market value at the time of the sale (*i.e.*, 2.9%) is significantly below the percentage that courts nationwide have found to be grossly inadequate in the context of a foreclosure sale. *See Armstrong v. Csurilla*, 817 P.2d 1221, 593 (N.M. 1991) (holding that prices in the 10-40% range "call for special scrutiny by the court to be sure that . . . the grossly inadequate price is not confirmed absent good reasons why it should be"); *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 419 (Del. 1994) (explaining that special judicial scrutiny should be applied where the property was sold at less than 50% of fair market value); *Chew v. Acacia Mut. Life Ins. Co.*, 437 P.2d 339, 50 (Colo. 1968)

(invalidating sale at 72% of fair market value); *Home Owners' Loan Corp. v. Braxtan*, 44 N.E.2d 989, 991-92 (Ind. 1942) (invalidating sale at 17% of value). This is unconscionable.

D. The Superior Court Correctly Held That U.S. Bank, As Trustee Has Superior Title To The Property.

The Superior Court correctly held that "U.S. Bank[, as Trustee] holds superior title to the Property such that the Tyroshi Deed is not effective against U.S. Bank[, as Trustee] and U.S. Bank[, as Trustee] is the legal owner of the Property." JA 2097. "In order to succeed on a case for quiet title, Plaintiff must 'at least prove a title better than that of the defendant, which, if not overcome by the defendant, is sufficient.'" JA 2094 (quoting *Jessup v. Progressive Funding*, 35 F. Supp. 3d 25, 34 (D.D.C. 2014)).

Here, the Court correctly held that U.S. Bank, as Trustee holds superior title to the Property because: (a) U.S. Bank, as Trustee purchased the Property for $385,000 at a Judicial Foreclosure Sale that was ratified by the Superior Court while Tyroshi paid only $10,000 for the Property at the Condominium Foreclosure Sale; (b) U.S. Bank, as Trustee promptly recorded its deed without notice of the Tyroshi Deed; (c) Tyroshi was aware of the Judicial Foreclosure Action but "did not attempt to assert its ownership to the Property through intervention or otherwise; (d) U.S. Bank, as Trustee recorded its Deed to the Property a year and a half before Tyroshi recorded its deed; (e) no one sought Fannie Mae's consent for the Condominium

Foreclosure sale, (f) Tyroshi collected rents from the Property for at least three years but failed to pay any condominium assessments, taxes, or insurance for the Property while U.S. Bank, as Trustee had paid $58,899.70 in condominium assessments, taxes, and insurance for the Property by the time of trial; and (g) U.S. Bank, as Trustee is a creditor and bona fide purchaser of the Property pursuant to Section 42-401 of the D.C. Code. *See* JA 2095-96.

As an initial matter, Tyroshi does not challenge the Superior Court's factual findings in this appeal, including (a)-(f) set forth above. Tyroshi also does not challenge in this appeal the Superior Court's legal conclusion that U.S. Bank, as Trustee was a creditor within the meaning of the statute. Nor can it. The evidence established that, at the time of the Condominium Foreclosure Sale, Fannie Mae owned the loan secured by the Property and Wells Fargo serviced the loan, thus making them creditors. JA 1314:13-1315:11. The loan was then sold to LSF9 with U.S. Bank acting as Trustee, which then became the creditor. JA 2096. Tyroshi's failure to challenge these factual findings and legal conclusion constitutes waiver and this Court can affirm the Superior Court's finding that U.S. Bank, as Trustee holds superior title to the Property on this basis alone. *Doe v. D.C. Comm'n on Hum. Rts.*, 624 A.2d 440, 448 n.8 (D.C. 1993) ("[I]ssues not addressed in briefs are ordinarily waived.").

Tyroshi's only argument under Section 42-401 is that U.S. Bank, as Trustee was not a subsequent, bona fide purchaser because it had any notice of the sale of the Property to Tyroshi. There is no actual notice of Tyroshi's purchase of the Property because Tyroshi did not record the Tyroshi Deed until 2018—2 years after the Judicial Foreclosure Action that led to the issuance and recordation of the Trustee's Deed. As to constructive notice, at trial, Tyroshi produced a document, which it asserted was a letter from counsel for Jenkins Row addressed to Wells Fargo, dated May 1, 2014, and providing information relating to the Condominium Foreclosure Sale. JA 1246. Tyroshi, however, produced no evidence that Wells Fargo ever received this document. *See id*. In fact, Tyroshi failed to call a witness from Jenkins Row to authenticate this letter, explain its provenance, or confirm that it was ever mailed. Based on U.S. Bank, as Trustee's recording of its deed without any notice of any claims held by a third party, the Superior Court properly concluded that U.S. Bank, as Trustee was a bona fide purchaser.

CONCLUSION

This Court should affirm the Superior Court's March 22, 2021 Omnibus Order granting Defendant Jenkins Row's Motion to Dismiss and its October 24, 2023 Order finding in favor of U.S. Bank, as Trustee on all claims, dismissing this appeal, and closing the case.

Dated: December 18, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2024, the foregoing Brief of Appellee was filed electronically with the Clerk of the Court for the District of Columbia Court of Appeals using the Appellate E-Filing System. All participants in the case are registered users and the system will serve them.

/s/ Melissa O. Martinez
Melissa O. Martinez