21-CV-8

DISTRICT OF COLUMBIA COURT OF APPEALS

SOUTHERN COURT COMMUNITY ASSOCIATION, INC.
V. BETTY MURRAY, *et al*.

APPEAL FROM THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLEE, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR HIS ASSET SECURITIZATION CORPORATION TRUST 2006-WMC1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-WMC1

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DISCLOSURE STATEMENT

Pursuant to D.C. App. Rule 26.1, Deutsche Bank National Trust Company, as Trustee for HIS Asset Securitization Corporation Trust 2006-WMC1, Mortgage Pass-Through Certificates, Series 2006-WMC1 ("Deutsche Bank") discloses as follows:

1. Deutsche Bank is a securitized trust which has no parents, subsidiaries or corporate affiliates.
2. Specialized Loan Servicing LLC is the servicer of the loan account at issue in this case and thus may have financial interest in the outcome of this litigation.
3. Deutsche Bank is unaware of any additional corporations, unincorporated associations, partnership of other business entities, not a party to this case, which may have a financial interest in this litigation.

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STATEMENT OF THE CASE

This appeal arises from a backdoor attempt by Southern Court Community Association, Inc. ("Southern Court") to determine lien priority as to the property at 4633 6th Street, S.E., Washington, DC (the "Property"), without having to satisfy due process. Southern Court obtained a money judgment against the owner of the Property, Betty Murray ("Murray"), for unpaid homeowner's association dues. Then, Southern Court filed what it called a "Renewed Motion for Interpleader and Declaratory Relief" in which it sought a declaration that its money judgment had priority over pre-existing liens against the Property, without actually filing a pleading seeking that relief or serving process on those other claimants. No summons were issued and Southern Court simply mailed out copies of its motion to potential lien claimants.

Perhaps reflecting the lack of service or any of the other niceties of due process, only Deutsche Bank National Trust Company, as Trustee for HIS Asset Securitization Corporation Trust 2006-WMC1, Mortgage Pass-Through Certificates, Series 2006-WMC1 ("Deutsche Bank") responded to the motion. Deustche Bank's opposition pointed out the numerous procedural and substantive defects in Southern Court's attempted end-run around due process, including the lack of due process, the inapplicability of the interpleader rule to this scenario, the impropriety of determining lien priority pre-sale in a judicial sale, and the lack of

any substantive merit to Southern Court's claim to lien priority. The Superior Court agreed, finding that Southern Court's motion was procedurally improper. This appeal followed. To the extent that the Court of Appeals sees fit to hear the appeal, the Superior Court's ruling should be affirmed.

However, Southern Court also filed a motion for reconsideration of the Superior Court's order. As such, this appeal is premature, if it could be proper in the first place, and the Court of Appeals does not have jurisdiction to adjudicate same. Furthermore, the order denying Southern Court's motion is not a final order and is thus not appealable. Even if the appeal was timely, it would be an improper interlocutory appeal. The money judgment entered against Murray was an appealable final order, but it was entered long before this appeal was taken. If Southern Court proceeded to sale, then the sale ratification order (and potentially the audit ratification order) would be a final, appealable order. The order on Southern Court's interpleader motion is neither final nor appealable. As such, this appeal should be dismissed without reaching the merits.

SUMMARY OF THE ARGUMENT

Southern Court's "interpleader" motion is fundamentally flawed both procedurally and substantively. Procedurally, Southern Court has failed to satisfy due process, has failed to satisfy the Rule 22 requirements for joining parties, and cannot satisfy the procedural pre-requisites for conducting a judicial sale.

Substantively, the Declaration upon which Southern Court relies does not provide for retroactive priority for assessments and even if it did, the Declaration would not be enforceable against *bona fide* purchasers like Deutsche Bank because the Declaration was not recorded properly. The Superior Court correctly denied Southern Court's "interpleader" motion for procedural reasons. If the Superior Court had reached the merits, it should have denied the motion on the merits as well. Either way, this Court should affirm the Superior Court's ruling, which will leave Southern Court with the only post-judgment remedy to which it is entitled – obtaining a writ of *fieri facias* and conducting a Marshal's sale of the Property.

STATEMENT OF THE ISSUES

This appeal concerns whether the Superior Court was correct in denying Southern Court's "interpleader" motion and closing the underlying case.

The issues are:

1. Whether Plaintiff can adjudicate lien priority pre-sale in the context of a judicial sale, without requesting affirmative relief in a pleading and serving process on all interested parties.

2. Whether Deutsche Bank was properly before the trial court and subject to adjudication of its rights absent service of process, including an operative pleading seeking relief against Deutsche Bank.

3. Whether Plaintiff's "interpleader" motion had any substantive merit.

4. Whether Plaintiff is entitled to remand to conduct a judicial foreclosure sale.

5. Whether this Court has jurisdiction over this appeal.

STATEMENT REGARDING JURISDICTION

Judgment was entered in favor of Southern Court and against Betty Murray, the sole Defendant, by the Superior Court on February 5, 2020. A.22 – A.23. No appeal was taken from the judgment. Southern Court appeals from an order denying its Renewed Motion for Interpleader and Declaratory Relief entered by the Superior Court on December 9, 2020. A.144 – A.147. That appeal was taken on January 7, 2021. As the December 9, 2021 order was not a final order, Southern Court's January 7, 2021 notice of appeal was not timely. *See* DC Code §11-721(a); DC Court of Appeals Rule 4(a)(1).

In the alternative, even if this court deemed the December 9, 2020 order to be a final order for purposes of appeal, this court nonetheless lacks jurisdiction. On January 5, 2021, prior to noticing this appeal, Southern Court filed a motion for reconsideration of the December 9, 2021 order. A.148 – A.173. The filing of a motion under Rule 59 tolls the time for appeal and retains jurisdiction in the Superior Court. Rule 4(a)(4)(B)(ii).

STATEMENT OF FACTS

As of April 14, 1981 the Property was owned by Robert E. Hess, III ("Hess") and Thomas S. Condit ("Condit"). *See* A.107 – A.121; A.123 at ¶6. On April 14, 1981, Hess, Condit and a variety of other lot owners and trustees executed the Declaration at issue in the Plaintiff's motion (the "Declaration"). *See* A.107 – A.121;

A.123 at ¶7. The Declaration was recorded with the Recorder of Deeds for the District of Columbia as Instrument No. 8100013244 on April 27, 1981. A.123 at ¶8.

The Declaration was not indexed under any of the appropriate references in the records index. A.123 at ¶9; A.124 at ¶10. The Declaration ***was not*** recorded under the names of the owners of the Property or under the appropriate square and lot designation. A.123 at ¶9 to A.126 at ¶19. The Declaration ***was not*** even recorded under the former square and lot designation for the entire development. A.124 at ¶12. Rather, the Declaration was indexed under Square 6242, Lot 0820 and the names HESS R and BENTON A JR". A.124 at ¶13; A.126 at ¶19.

The standard in the industry for title searching requires the abstractor to search the names of all owners in the grantor/grantee index and to search for the appropriate square and lot designation in the SSL index. A.126 at ¶20 to A.127 at ¶24. A title searcher using standard industry practices would not be able to locate the Declaration in the chain of title for the Property. A.126 at ¶22 to A.127 at ¶24. Murray purchased the Property in 2005. The Declaration is not referenced in Murray's deed for the Property. A.127 at ¶23.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT SOUTHERN COURT'S MOTION WAS PROCEDURALLY DEFECTIVE AND IMPROPER.

Conducting a judicial sale[1] in execution on a money judgment is not an avenue for determination of lien priority as to real property. While Southern Court has framed its claim as one to "foreclose" it points to no precedent or statute providing a right to judicial sale arising from a money judgment, and Deutsche Bank is not aware of any such precedent. Rather, Southern Court points to Superior Court Rule 308, which provides for Court-ordered sales of real estate. Rule 308 refers to 28 U.S.C. §2001 as defining the procedure for such sales to the extent that procedures are not defined in Rule 308. The only additional "procedure" provided in Section 2001 is the requirement of a hearing if the Southern Court chooses to sell via *private* sale.

Based on Southern Court's repeated reference to a "foreclosure", it appears that Southern Court intends to conduct a public sale under Rule 308(b), which requires no hearing. A public sale, much like a foreclosure, merely requires notice to interested parties of the details of the date, time and place of the sale. Rule 308(b)(1). Any person receiving notice of sale thus has notice that the selling party believes that the sale will eliminate their interest and should thus appear and protect their interest by bidding or otherwise.

[1]Assuming *arguendo* that Southern Court can conduct a judicial sale and is not limited to writ of *fieri facias* under Rule 69 as is set forth more fully below.

Even if Southern Court intended to proceed with a private sale, the proposed interpleader procedure does not comport with the rules. The "motion and notice" required by Section 2001 is for a hearing to determine Southern Court's right to conduct a private sale upon a finding that a private sale would be in the "best interests of the estate." 28 U.S.C. §2001(b). There is no provision in Rule 308 or Section 2001 for a pre-sale determination of lien priorities. That is what the Southern Court wants, to resolve its questions about the statue of title without having to actually go to the expense of filing a proper quiet title action. While that desire is understandable, desire does not create a procedural right to relief out of whole cloth.

Southern Court fares no better under Rule 22, which is the underlying predicate for its motion. Southern Court relied upon Rule 22 in its attempt to join ten or so parties in this case in the apparent hope of binding them to a lien priority determination without actually providing them with a pleading, summons or even the most basic due process. Rule 22 is not a vehicle for obtaining affirmative relief. Rather, Rule 22 merely provides the ability to join necessary parties in an existing case and to require those newly joined parties to assert any claims that they may have, as a supplement to the joinder provisions of Rule 20. *See* D.C. Civ. R. 22(b). Southern Court's claims does not meet the joinder requirements of Rule 22 and even if they did, Southern Court did not follow the procedural requirements of Rule 22.

Rule 22 permits joinder where there are "persons with claims that may expose a plaintiff to double or multiple liability…" D.C. Civ. R. 22(a). None of the proposed new parties, including Deutsche Bank, are alleged to have any claims against Southern Court. The only pleading in this case seeks a money judgment against Murray and some manner of post-judgment foreclosure. There are no competing claims to money and no claims against Southern Court. It is not clear how Southern Court intends to foreclose, as its money judgment can only be enforced by writ of *fieri facias*. *See* D.C. Civ. R. 69. There is no provision in the law for "foreclosure" of a money judgment. Even if Southern Court had the right to foreclose, the proper place to deal with lien priority issues would be at the audit stage, where the court determines who gets paid and in what amount(s). Southern Court is trying to conduct an audit before a foreclosure even happens. Furthermore, prior to any sale, Southern Court would be required to give notice to junior creditors. If Southern Court thinks it has a first lien, its remedy is to execute on the judgment, give notice to junior creditors, and let the Superior Court resolve the priority dispute post-sale at the audit.

More importantly, Southern Court fundamentally failed to follow the requirements of Rule 22 regarding joinder and service. Rule 22 provides that new parties be joined and required to interplead – meaning to plead in response to the complaint. Southern Court would provide no such opportunity, and its proposed

procedure would permit only a response to the motion. There is no pending pleading to which new parties can respond and there is nothing to interplead – these new parties ***have no claims against Southern Court.*** Rule 22 also requires that any joined parties be served "in the manner and within the time limits provided by Rule 4." Service under Rule 4 requires the issuance of summons, which sets the "time limits" for service. D.C. Civ. R. 4. No summons have been issued in this case as to anyone but Murray, thus Southern Court did not and could not comply with the service requirements in Rules 4 or 22.

That creates yet another procedural issue – without proper service the Superior Court did not have jurisdiction over all interested parties. Even if Southern Court filed a post-judgment amended complaint asserting some sort of quiet title or declaratory relief claims regarding lien priority, Southern Court would still need to *properly* join all parties with an interest in the Property in order for an adjudication of lien priority to be effective. As it stands now, *no one* has been served properly other than Murray. Because Southern Court did not satisfy the procedural requirements of Rule 22, did not serve all parties properly, with summons and all of the non-parties did not voluntarily appear, any judgment in this action would have been a jurisdictionally defective nullity. *See* D.C. Civ. R. 19(b); Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A., 98 A.3d 166, 171-72

(D.C. 2014). The Superior Court correctly refused to go along with Southern Court's procedural chicanery and the Superior Court's ruling should be affirmed.

II. THE TRIAL COURT CORRECTLY RULED THAT IT COULD NOT ADJUDICATE LIEN PRIORITY WITHOUT DUE PROCESS.

Southern Court posits that Deutsche Bank has waived any dispute over service by entering an appearance. Southern Court is wrong. Entering an appearance is not a waiver of service. Rather, to waive service, a responsive *pleading* must be filed. Kiro v. Moore, 229 F.R.D. 228 (D. N.M. 2005); Leach v. BB&T Corp., 232 F.R.D. 545, 551 (N.D. W.V. 2005) (waiver of service only occurs when a responsive pleading is filed); Lewellen v. Morley, 909 F.2d 1073, 1077 (7th Cir. 1990); Hudson v. Christian, 1994 WL 315471 (D.C. Cir. June 15, 1994). The only available responsive pleading is an Answer. Rule 7(a). Deutsche Bank did not file an Answer. Indeed, Deutsche Bank could not file an Answer, because it was not served with a Complaint and is not a defendant. Rule 7(a) (pleadings include complaints, third party complaints, cross claims, counterclaims, and answers thereto).

Rather, Deutsche Bank filed an opposition to Southern Court's interpleader motion – a *paper*. Rule 7(b) (any request for relief other than a pleading is a motion or a paper). Deutsche Bank did not waive service and Southern Court is still required to effectuate service on Deutsche Bank (and the other interested parties) if it wants to bind them to some manner of quasi-quiet title proceeding. Until Southern Court files a *pleading* seeking quiet title relief, has summons issued, and effectuates service

pursuant to Rule 4, Southern Court cannot obtain a valid determination of the status of title. Litigating lien priority and conducting discovery with Deutsche Bank alone would be pointless. The Court cannot adjudicate title without all parties. *See* D.C. Civ. R. 19(b); Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A., 98 A.3d 166, 171-72 (D.C. 2014).

While Southern Court argues that "[a]ll of the persons with claims were served", its evidence of service shows the opposite. Mot. at ¶15. Rule 22 (the basis for Southern Court's quasi-quiet title claim) requires that any joined parties be served "in the manner and within the time limits provided by Rule 4." Service under Rule 4 requires the issuance of summons, which sets the "time limits" for service. D.C. Civ. R. 4. No summons have been issued in this case, thus Southern Court has not and cannot comply with the service requirements in Rules 4 or 22. Furthermore, Southern Court appears to have mailed "service" to random people without any concern for whether they were actually able to receive service under Rule 4. Even if summons had been issued, a pleading had accompanied the summons, and Southern Court had the procedural right to join parties at this point, service would nonetheless have been improper, to wit:

- *Suntrust Bank* –Suntrust merged with BB&T and became Truist Bank in December 2019, prior to Southern Court's "service". A.205. Truist's registered agent in DC is CT Corporation System. A.206 – A.209. Southern Court did not "serve" the right person. A.84.

- *Caliber Home Loans* – Caliber's resident agent in DC is CT Corporation System. A.210 – A.213. Southern Court did not "serve" the right person. A.86.

- *Mortgage Electronic Registration Systems* – MERS does not have a registered agent in DC, but it is unclear how Southern Court decided to serve an address in Michigan. MERS is a Delaware corporation with its principal office and registered agent in Reston, Virginia. A.214 – A.216. Southern Court did not "serve" the right person. A.87.

- *Homebridge Mortgage Bankers Corp.* – Homebridge's registered agent in DC is National Registered Agents, Inc. A.217 – A.220. Southern Court's own affidavit indicates that attempted service was unsuccessful. A.88.

- *CIT Group/Consumer Finance, Inc.* – It is not clear who Southern Court served for CIT. A.90.

- *Rubenstein, Cogan & Quick PC* – Michael Cogan is the resident agent for this party. A.223. Southern Court "served" someone named "Lauren Rine". A.91.

- *Renee Dyson* – It does not appear that any "service" was made on Ms. Dyson.

- *HSI Asset Securitization Corp.* – HSI was "served" by delivery to other parties, without any explanation as to how that would constitute valid service.

- *Specialized Loan Servicing LLC* – SLS's DC registered agent is United Agent Group, Inc. A.225 – A.228. Southern Court did not provide a return receipt and has no evidence of who received its certified mailing somewhere in Colorado. A.101.

- *Jeff Nadel, Esq.* – Southern Court acknowledges that Mr. Nadel has not been served.

Other than the Mayor of the District of Columbia, James Clarke, and Wells Fargo, it appears that Southern Court's "service" would have been improper even if summons had been issued. That likely explains why no one else has responded to

Southern Court's procedural chicanery – none of the necessary parties are aware of these proceedings.

III. SOUTHERN COURT'S CLAIM TO A FIRST PRIORITY POSITION HAS NO SUBSTANTIVE MERIT.

A. SOUTHERN COURT'S DECLARATION DOES NOT PROVIDE FOR RETROACTIVE LIEN PRIORITY.

Southern Court relies on a strained reading of the Declaration for the proposition that future homeowners' association assessments operate as a lien retroactive to 1981. In pertinent part, the Declaration states that:

> The foregoing assessments, together with interest, costs and attorney's fees shall be a charge and continuing lien on the land against which such assessment is made…
>
> A.113.

The Declaration does not say anything about future assessments obtaining *retroactive* lien priority, or that a lien was being created at the time the Declaration was recorded. Rather, the Declaration states that assessments ***shall be*** a lien, implying that each annual or special assessment will be a lien ***only when assessed***. That follows simple common sense, as the Declaration could not advise of or create a lien for assessments 30 years later, because the declarant could have no idea how much will be assessed from year to year.

In apparent acknowledgement of the fact that common ownership declarations like the Declaration provide collection mechanisms that are subordinate to first

mortgage liens, the District of Columbia provided condominium associations with a six-month "super-lien" for monthly assessments. *See* D.C. Code §42-1903.13(a)(2); Chase Plaza Condominium Ass'n., Inc. v. JPMorgan Chase Bank, N.A., 98 A.3d 166, 175-76 (D.C. 2014). Perhaps because of the greater prevalence of condominiums as opposed to homeowner's associations in the District, the DC Code does not bother to provide homeowner's associations, like Southern Court, with any such super lien rights.

While it does not appear that District of Columbia courts have directly addressed the issue of lien priority under a Homeowner's Association Declaration, other courts have. In Florida, a homeowners' association assessment lien recorded pursuant to a declaration of covenants only takes priority over an intervening mortgage where the declaration contains "***specific language*** indicating that the lien relates back to the date of the filing of the declaration or that it otherwise takes priority over intervening mortgages." Holly Lake Ass'n. v. Federal Nat. Mortg. Ass'n., 660 So.2d 266, 269 (Fla. 1995) (***emphasis added***). In New York, a declaration-based lien for assessments only takes priority retroactively where the declaration specifically provides for immediate creation of a lien in an amount pre-determined in the Declaration. Valley Nat. Bank v. Penna, 91 A.D.3d 853, 854-55 (N.Y. 2nd Dept. 2012). Similar results are found in Oregon and Texas, other states without statutes defining the priority of homeowners' association assessment liens.

See F.N. Realty Services, Inc. v. Oregon Shores Recreational Club, Inc., 133 Or.App. 339 (Ore. 1995); Riner v. Neumann, 353 S.W.3d 312 (Tex. 2011).

The common thread in these cases is that the Declaration has to contain specific language notifying subsequent purchasers that assessments would constitute priority liens – either (a) that the Declaration creates an immediate lien for a set amount of assessments per year or (b) that the Declaration expressly provides that future assessments will be given retroactive lien priority. This Declaration does neither. Rather, it simply states that future assessments will become liens when assessed. Southern Court's past due assessments did not become a lien until they were assessed, which was after Deutsche Bank's deed of trust was recorded.

B. EVEN IF THE DECLARATION DID SPECIFICALLY PROVIDE FOR RETROACTIVE LIEN PRIORITY, IT WAS NOT RECORDED PROPERLY TO PROVIDE CONSTRUCTIVE NOTICE.

A land instrument can only take priority over another land instrument if it is properly recorded in the land records to give constructive notice to subsequent owners and mortgagees. The idea of "first in time, first in right" is bottomed on the idea that properly recording an instrument in the chain of title provides constructive notice to the world. First in time, first in right applies to the person "who first ***notifies*** the public of his security interest." Malakoff v. Washington, 434 A.2d 432, 434 (D.C. 1981) (***emphasis added***). The key to providing notice is *proper* recording. While the Declaration was recorded in the land records, it does not appear in the

chain of title for the Property. The Declaration was not indexed under the names of the owners at the time or under the Square/Lot identifiers used to identify the Property. As explained by Deutsche Bank's expert [*See* A.122 to A.128], a person searching title would not be able to find this Declaration if conducting a title search for this Property. Constructive notice does not arise when an instrument cannot be found within the chain of title.

While the DC Court of Appeals has not addressed this issue, the Maryland Court of Appeals has, in Greenpoint Mortgage Funding, Inc. v. Schlossberg, 390 Md. 211 (2005). The Greenpoint court considered whether a mis-indexed notice of *lis pendens* was effective against a third party.

> We continue by offering a brief description of the process of examination of titles, i.e., the examination of land record instruments, which is a relatively laborious process that changed little during the first centuries following this nation's founding. The importance of correct indexing being a necessary part of filing and recording of instruments affecting property—if the purpose of the document is to afford constructive notice—can only be understood, if one fully understands the nature of the title examination process. In this respect, we refer not to the commercial operators of title houses, but to the primary examination of titles located in land records, upon which all purchasers and insurers basically rely.
>
> A title examiner goes to the place where the land records and other applicable records repose. He or she develops a chain of title, i.e., a list of the people who have owned the property for the last specified period of years. The property, or various fractional interests in it, may have been owned by one person or a hundred persons over that particular period of time. Then, during the periods in which each owner owned the property, or any portion of it or interest in it, the examiner must check to see whether during the period that particular owner owned the

property, he or she had sold or mortgaged his or her interest in it to someone other than the person above him in the chain of title (in essence selling or mortgaging the same property more than once) or whether during the period of time each particular owner owned the property any judgments were rendered against such respective owner or whether, during that period any suits were filed anywhere that might constitute *lis pendens* against the respective owner and to the property while that owner owned it.

As a practical matter it is impossible in a lifetime to examine every original document of every kind ever filed in the land and other records, which would be necessary if the buyer or lender is to be assured that the property is lien free and is owned by the person who is selling it, *if the buyer or mortgage lender is required to be responsible for non-indexing or mis-indexing*.

Presume that an owner in 2000 had owned a subject property in Baltimore City for four years. In the year 1999–2000 there were 31,000 civil cases alone filed in that jurisdiction; in the year 1998–1999 there were 32,742 civil cases filed; in 1997–1998 there were 28,119 civil cases filed; and in 1996–1997 there were 26,877 civil cases filed in the Circuit Court of that jurisdiction. Altogether, during the period our seller owned the property there were 118,737 civil cases filed. Additionally, the title examiner under such circumstances would have to examine all cases pending at the beginning of the respective period of time—in the example given there were an additional 107,920 civil cases pending in that jurisdiction at the beginning of 1996–1997. If mis-indexing were to be at the risk of the buyer or, as in the present case, at the risk of the banks who are the third-party mortgagees, the person examining the title would have to personally read all the papers filed in those 226,658 cases in addition to federal lien dockets, tax records and the millions of other documents in the land records in order to insure that none of them constituted lis pendens against the property and to verify that nothing adversely affecting title occurred while the last owner (seller) held complete and clear title to the property. Then, once that is accomplished (which is impossible in the first instance) the title examiner would have to do the same thing in respect to the period of time that each prior owner owned the property, millions of additional documents (usually for a period of at least 60 years at the time the writer was examining titles).

> Relying on indexing is the only thing that makes it possible for title attorneys to limit the examination of documents to those that are relevant, generally those cases and documents indexed in the grantor's or debtor's name. If indexing were to be eliminated, the marketability of titles would be seriously compromised and the entire system of property in this country might collapse.
>
> The contrary position, i.e., indexing is not required, would result in millions of documents having to be reviewed to certify a clear title. It would be an impossible task. With indexing as a requirement of the process as provided for by statute, the title examiner needs to review only the documents reflected on the appropriate index entries under the respective owners, and prior owners' names, to verify that the documents identified on the indexes do, or do not, affect title. It is still tedious but it can be, and regularly is, accomplished.
>
> The most important public records relating to the examination of land titles are the indexes. Everything depends on indexing. *Without indexing nothing works*.
>
> Greenpoint, 390 Md. at 236-38 (*emphasis* in original).

The recording party, who is the only party in the position to correct an indexing error, has the burden of confirming proper indexing. Id. at 250-51. Without proper indexing, a recorded instrument does not provide constructive notice. Id. at 251.

The Declaration is not indexed properly, cannot be found in the chain of title for the Property, and is not referenced in Murray's deed. Deutsche Bank cannot be charged with notice of an instrument that it could not have been located through a proper title search. While the Declaration may have been recorded first, it was not recorded *correctly*. As such, the Declaration only takes effect against parties with *actual* notice of its existence. *See* Clay Properties, Inc. v. Washington Post Co., 604

A.2d 890 (D.C. 1992). Deutsche Bank is a bona fide purchaser for value, without notice, and its deed of trust is preferred over the Declaration. *See* D.C. Code §42-406; Henok v. Chase Home Finance, LLC, 890 F.Supp.2d 65, 68 (D. D.C. 2012) (bona fide purchaser status is presumed and it is up to the party attacking title to plead facts showing notice on the part of a bona fide purchaser). Had the Superior Court been able to get past the procedural defects in Southern Court's motion to address the merits, the motion would have been denied anyway. Because Southern Court's motion fails on the merits, this Court should affirm the Superior Court's ruling.

IV. SOUTHERN COURT IS NOT ENTITLED TO CONDUCT A JUDICIAL FORECLOSURE SALE.

Southern Court complains that the Superior Court should not have closed its case in denying the interpleader motion, notwithstanding its own protestations that it does not want to conduct a sale without first adjudicating lien priority. The fact that Southern Court's claim to be able to conduct a judicial sale was not expressly adjudicated and that remand is required to do so is the only argument with any real appeal. However, that argument is a red herring, as remand only makes sense if Southern Court can actually, legally conduct a judicial foreclosure sale.

Judicial sales are governed by Rule 308. However, Rule 308 does not create a substantive right to a judicial sale. There must be some recognized, underlying legal basis for the Court to order the sale of real property, whether it be foreclosure

of a deed of trust under its power of sale provision, a sale in lieu of partition, or some other identifiable legal basis to conduct such a sale. *See* Lynn v. Lynn, 617 A.2d 963 (D.C. App. 1992) (sale in lieu of partition); In re Parsons, 328 A.2d 383 (D.C. App. 1974) (sale by conservator); Rogers v. Advance Bank, 111 A.3d 25 (D.C. App. 2015) (power of sale foreclosure). The Court of Appeals has specifically distinguished the money judgments and *in rem* foreclosure remedies as being separate in the context of a promissory note and deed of trust, holding that obtaining a money judgment does not prevent enforcement of the separate, *in rem* rights under the deed of trust. Szego v. Kingsley Anyanwutaku, 651 A.2d 315 (D.C. App. 1994).

Southern Court seeks to foreclose on a money judgment. While a money judgment can be used to sell real property, the sale must be conducted by execution under Rule 69 and sale by the US Marshal pursuant to D.C. Code §15-314. If Murray does not pay on the money judgment, Southern Court can obtain a writ of *fieri facias* from the Superior Court and have the Marshal advertise and sell the Property at public auction. *See* Steward v. Moskowitz, 5 A.3d 638 (D.C. 2010). Other than issuance of the writ, no further court proceedings are required for purposes of execution. Once the Superior Court issues the writ, the remaining actions are handled by the Marshal's Office. Even if the case was remanded, Southern Court would not have a right to the relief it requests. Remand would leave Southern Court with the same remedy it has now, obtaining a writ of *fieri facias* and conducting a

Marshal's sale of the Property. Remanding the case for further proceedings would serve no purpose.

V. THIS APPEAL SHOULD BE DISMISSED.

This Court's jurisdiction is predicated on the filing of a timely notice of appeal from a final order. The only final order entered in the case below was the money judgment entered against Murray. A final order "is one that ends the litigation on the merits and leaves nothing for the court to do but execute on the judgment." Ray Haluch Gravel Co. v. Central Pension Fund of Intern. Union of Operating Engineers, 571 U.S. 177, 183 (2014) (citations omitted); *see also* Puckrein v. Jenkins, 884 A.2d 46 (D.C. 2005). The money judgment ended the litigation on the merits and left nothing for the court to do but execute on the judgment.

Southern Court's post-judgment motion was in furtherance of execution and did not address the underlying merits of Southern Court's judgment or its ability to execute on same. Rather, the post-judgment motion was more in the nature of a premature attempt to determine the outcome of a post-execution audit of sale proceeds. In the normal course, once the sale is held, an audit will be conducted and sale proceeds will be distributed in order of priority, flowing down from the priority of the lien which is executed. Southern Court tried to obtain a pre-emptive declaration of the priority for future distributions. The denial of that motion and closing of the case did not reach the merits of Southern Court's underlying money

judgment and did not prevent Southern Court from executing on its judgment. The denial of Southern Court's motion simply meant that Southern Court had to follow the normal court process in executing on its judgment, a process which remains available to it notwithstanding the closure of the case. As the denial of Southern Court's motion was not a final order and the money judgment was entered nearly a year before the appeal was taken, Southern Court's notice of appeal was untimely and this Court does not have jurisdiction.

In the alternative, if the Court were to deem the denial of Southern Court's motion to be a final, appealable order, the notice of appeal was still untimely. On January 5, 2021, prior to noting this appeal, Southern Court filed a motion for reconsideration of the December 9, 2021 order. The filing of a motion under Rule 59 tolls the time for appeal and retains jurisdiction in the Superior Court. Rule 4(a)(4)(B)(ii). Where a notice of appeal is filed after the entry of judgment but prior to ruling on a Rule 59 motion, the notice of appeal *is not effective* until "the order disposing of the last such remaining motion is entered." Id. The Superior Court has not yet ruled on Southern Court's Rule 59 motion. As such, Southern Court's notice of appeal is not yet effective and cannot be the basis for jurisdiction in this Court. Southern Court's appeal should be dismissed.

CONCLUSION

The Superior Court's ruling should be affirmed.

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Certificate of Service

I hereby certify that on this 27th day of May, 2021, the foregoing brief was filed electronically and served via mail as follows:

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One copy of the brief and one copy of the Appendix to:

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ADDENDUM

DC ST § 11-721

Formerly cited as DC ST 1981 § 11-721

§ 11-721. Orders and judgments of the Superior Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from --

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia --

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

DC ST § 15-314

Formerly cited as DC ST 1981 § 15-314

§ 15-314. Appraisement; notice of sale.

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code.

DC ST § 42-406

Formerly cited as DC ST 1981 § 45-802

§ 42-406. First recorded deed preferred.

When 2 or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred.

§ 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments, shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

(A) A lien or encumbrance recorded prior to the recordation of the declaration;

(B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners' association. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c)(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due. By accepting a deed to a condominium unit, the owner shall be

irrevocably deemed to have appointed the chief executive officer of the unit owners' association as trustee for the purpose of exercising the power of sale provided for herein. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.
(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.
(3) The power of sale may be exercised by the chief executive officer of the unit owners' association, as trustee, upon the direction of the executive board, on behalf of the unit owners' association, and the chief executive officer of the unit owners' association shall have the authority as trustee to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.
(4)(A) A foreclosure sale shall not be held until at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.
(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:
(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;
(ii) Expressly state that the foreclosure sale is for either:
(I) The 6-month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or
(II) More than the 6-month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and
(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.
(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:
(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;
(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;
(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners' association and instructions on how the unit owner can request a full account statement;
(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

“FAILURE TO PAY AMOUNTS INDICATED IN THE ENCLOSED NOTICE OF FORECLOSURE SALE OF CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY RESULT IN SALE OF YOUR UNIT.

“YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.

“The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].

“The U.S. Department of Housing and Urban Development (“HUD”) sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number].”; and
(v) Any other information the Mayor may prescribe by rule.
(E)(i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:

(I) The Mayor or the Mayor's designated agent;
(II) Any and all junior lien holders of record; and
(III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.
(ii) The unit owners' association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.
(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.
(6) The proceeds of a sale shall be applied:
(A) To any unpaid assessment with interest or late charges;
(B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and
(C) The balance to any person legally entitled to the proceeds.
(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.
(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years, not including any period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, and for 60 days thereafter from the date such assessment (or any installment thereof) become due and payable.
(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for reasonable costs and attorneys' fees actually incurred by the unit owners' association.
(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 42-1902.09.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.
(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 42-1903.12(c).
(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full.

28 U.S.C.A. § 2001

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.
Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city

situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.
(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.
(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

Rule 4. Appeal as of Right--When Taken

(a) Appeal in a Civil Case.
(1) *Time for Filing a Notice of Appeal.* The notice of appeal in a civil case must be filed with the Clerk of the Superior Court within 30 days after entry of the judgment or order from which the appeal is taken unless a different time is specified by these Rules or the provisions of the District of Columbia Code. See, for example, **D.C**. Code § 17-307 (b) (2001) (small claims). An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of **Rule 4** (a).
(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.
(3) *Multiple Appeals.* If one party files a timely notice of appeal, any other party to the proceeding in the Superior Court may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by **Rule 4**(a)(1), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*
(A) If a party timely files in the Superior Court any of the following motions under the rules of the Superior Court, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
(i) for judgment as a matter of law;
(ii) to amend or make additional factual findings, whether or not granting the motion would alter the judgment;
(iii) to vacate, alter, or amend the order or judgment;
(iv) for a new trial; or
(v) for relief from a judgment or order if the motion is filed no later than 10 days (computed using Superior Court Rule of Civil Procedure 6(a)) after the judgment is entered.
(B)(i) The time for filing a notice of appeal fixed by this section runs from the entry on the Superior Court docket of an order fully disposing of any of the foregoing motions, except that if any such order is conditioned on acceptance of a remittitur by any party, the time runs from the date on which a judgment based on acceptance of the remittitur is entered. Any statement accepting or rejecting a remittitur must be filed in the Superior Court and served on all other parties.
(ii) If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in **Rule 4** (a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.
(iii) A party intending to challenge an order disposing of any motion listed in **Rule 4**(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
(5) *Extension of Time.*
(A) The Superior Court may extend the time for filing the notice of appeal if:
(i) a party files the notice of appeal no later than 30 days after the time prescribed by **Rule 4**(a) expires; and
(ii) that party shows excusable neglect or good cause.
(B) A request for extension of time made before the expiration of the time prescribed in **Rule 4**(a)(1) or (3) may be ex parte unless the court requires otherwise. If the request is made after the expiration of the prescribed time, it must be by motion and provide such notice to the other parties as the court deems appropriate.
(6) *Entry Defined.* A judgment or order is entered for purposes of this rule when it is entered in compliance with the rules of the Superior Court. When a judgment or final order is signed or decided outside the presence of the

parties and counsel, such judgment or order will not be considered as having been entered, for the purpose of calculating the time for filing a notice of appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the docket reflecting service of notice by that Clerk.
(7) *Reopening the Time to File an Appeal.* The Superior Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
(A) the court finds that the moving party did not receive notice under Superior Court Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Superior Court Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
(C) the court finds that no party would be prejudiced.
(b) Appeal in a Criminal Case.
(1) *Time for Filing a Notice of Appeal.* A notice of appeal in a criminal case must be filed with the Clerk of the Superior Court within 30 days after entry of the judgment or order from which the appeal is taken, unless a different time is specified by the provisions of the District of Columbia Code.
(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the announcement of a verdict, decision, sentence, or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry. If a notice of appeal filed after verdict is not followed by the entry of a judgment, the appeal is subject to dismissal at any time for lack of jurisdiction.
(3) *Effect of a Motion on a Notice of Appeal.*
(A) If a defendant timely makes any of the following motions under the Superior Court Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:
(i) for judgment of acquittal under Rule 29;
(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or
(iii) for arrest of judgment under Rule 34.
(B) A notice of appeal filed after the announcement of a verdict, decision, sentence, or order--but before the court disposes of any of the motions referred to in **Rule 4**(b)(3)(A)--becomes effective upon the later of the following:
(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.
(C) A valid notice of appeal is effective--without amendment--to appeal from an order disposing of any of the motions referred to in **Rule 4**(b)(3)(A).
(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the Superior Court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by **Rule 4**(b).
(5) *Entry Defined.* A judgment or order is deemed to be entered within the meaning of this subdivision when it is entered on the criminal docket by the Clerk of the Superior Court. When a judgment or final order is signed or decided out of the presence of the parties and counsel, such judgment or order will not be considered as having been entered, for the purpose of calculating the time for filing a notice of appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the criminal docket reflecting the mailing of notice. *Singer v. Singer*, 583 A.2d 689 (**D.C**. 1990).

(c) Expedited and Emergency Appeals.

(1) *Expedited Appeals.*
(A) These appeals include, but are not limited to: government appeals from pre-trial orders, **D.C**. Code § 23-104(a)(1) (2001), and appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, **D.C**. Code § 11-721(g) (2001). Additionally, any party may file a motion with this court requesting that an appeal be expedited.
(B) The appellant or counsel for appellant must:
(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court.
(ii) Within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10(b)(4).
(C) Upon completion of the record, the Clerk will issue a briefing order, and the case will be given priority in calendaring.
(2) *Emergency Appeals.*
(A) These appeals include, but are not limited to: pre-trial bail or detention appeals, **D.C**. Code § 23-1324 (2001), juvenile interlocutory appeals, **D.C**. Code § 16-2328 (2001), government appeals from intra-trial orders, **D.C**. Code § 23-104(b) & (d) (2001), and extradition appeals, **D.C**. Code § 23-704 (2001).
(B) The appellant or counsel for appellant must:
(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal, the nature of the emergency appeal, the names and telephone numbers of all parties or their attorneys, and any transcript needed for the appeal.
(iii) Immediately order the necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.
(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally serve a copy on the other parties. The motion must be accompanied by a copy of the order being appealed from and any other documents filed in the Superior Court which counsel believes essential for the court's consideration.
(C) Opposing counsel must submit and personally serve a written response or cross-motion in compliance with **Rule 4**(c)(2)(B)(iv).
(D) The Clerk will advise the assigned division of this court of the pendency of the emergency appeal so that the case may be promptly decided or scheduled for argument where appropriate.
(E) In the case of a juvenile interlocutory appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.
(d) Appeal by an Inmate Confined in an Institution.
(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this **Rule 4** (d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:
(A) it is accompanied by:
(i) a declaration in compliance with 28 U.S.C. § 1746--or a notarized statement--setting out the date of deposit and stating that first-class postage is being prepaid; or
(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or
(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies **Rule 4** (d)(l)(A)(i).
(2) If an inmate files the first notice of appeal under this **Rule 4**(d), the 14-day period provided in **Rule 4**(a)(3) for another party to file a notice of appeal runs from the date when the Superior Court dockets the first notice.
(e) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received

and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.
(f) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41 (e).

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:
(1) a complaint;
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party complaint; and
(7) if the court orders one, a reply to an answer
(b) Motions and Other Papers.
(1) *In General.* A request for a court order must be made by motion. The motion must:
(A) be in writing unless made during a hearing or trial;
(B) state with particularity the grounds for seeking the order; and
(C) state the relief sought.
(2) *Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Rule 19. Required Joinder of Parties

(a) Persons Required to be Joined if Feasible.
(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:
(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
(i) as a practical matter impair or impede the person's ability to protect the interest; or
(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.
(3) *Service of Process.* Service of process under this rule must be accomplished in the manner and within the time limits prescribed by Rule 4.
(b) When Joinder is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
(2) the extent to which any prejudice could be lessened or avoided by:
(A) protective provisions in the judgment;
(B) shaping the relief; or
(C) other measures;
(3) whether a judgment rendered in the person's absence would be adequate; and
(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.
(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:
(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and
(2) the reasons for not joining that person.
(d) Exception for Class Actions. This rule is subject to Rule 23.

Superior Court Rules--Civil (SCR-Civil) Rule 22

Rule 22. Interpleader

(a) Grounds.
(1) *By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Service of process within this rule must be accomplished in the manner and

within the time limits provided by Rule 4. Joinder for interpleader is proper even though:
(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
(B) the plaintiff denies liability in whole or in part to any or all of the claimants.
(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.
(b) Relation to Other Rules and Statutes. This rule supplements and does not limit the joinder of parties allowed by Rule 20.

Rule 59. New Trial; Altering or Amending a Judgment

(a) In General.
(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues--and to any party--as follows:
(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court or District of Columbia courts; or
(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court or District of Columbia courts.
(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial:
(A) open the judgment if one has been entered;
(B) take additional testimony;
(C) amend findings of fact and conclusions of law or make new ones; and
(D) direct the entry of a new judgment.
(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.
(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.
(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Rule 69. Execution

(a) In General.

(1) *Money Judgment; Applicant Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution--and in proceedings supplementary to and in aid of a judgment or execution--must accord with the procedure of the District of Columbia, but a federal statute governs to the extent that it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person--including the judgment debtor--as provided in Rule 69-I.

Rule 308. Court Sales of Real and Personal Property

(a) Sale of Real Property. Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this court shall be governed by the provisions of Title 28, Section 2001, U.S.Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court.

(b) Public Sale: Procedure. Except when the order of Court otherwise provides, the officer making a public sale shall proceed in the manner following:

(1) *Publication.* The officer shall give previous notice of the sale by publication once a week for 4 weeks in a daily newspaper of general circulation in the District of Columbia. The notice shall describe the property substantially as in the order and shall state the time, place, manner and terms of sale and the deposit required.

(2) *Terms of Sale.* The terms shall be one-third of the purchase money in cash and the balance in 2 equal installments, payable on or before one and 2 years from date of settlement of sale, represented by the promissory notes of the purchaser with interest at 6 per cent per annum, payable semi-annually, secured by deed of trust on the property, or all cash at the option of the purchaser.

(3) *Place; Presence of Officer.* The sale shall be held upon the premises, and the officer making the sale shall be present and personally receive the deposit. If there be more than one officer the presence of 1 will be sufficient.

(4) *Report; Ratification.* A verified report of the sale shall be promptly made to the Court. Thereupon on motion and notice the Court may, in its discretion,

ratify the same with or without further notice. If the sale be ratified settlement shall be made and the real estate conveyed by proper deed.
(5) *Form of Order of Sale.* The order of sale shall not contain detailed directions as to the manner of proceeding, but shall do so only by reference to this rule.
(6) *Compensation of Auctioneer.* The compensation of the auctioneer shall be one and one-half percent of the 1st $10,000 plus three-eighths of 1 per cent of any amount over $10,000, of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the auctioneer's compensation shall be computed and paid at the same rate upon the entire sales price. In no case shall the auctioneer's compensation be less than $35 unless the property is withdrawn after being offered for sale, in which event the auctioneer's compensation shall be $25.

(c) Private Sale: Procedure.

(1) *Order for.* A private sale may be ordered after a hearing of which notice to all interested parties is given by publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.
(2) *Appraisers.* Before confirmation of a private sale the Court shall appoint 3 disinterested persons to appraise the property, or different groups of 3 appraisers each to appraise properties of different classes or situated in different locations. Such appraisers are to be appointed from the list maintained by the Register of Wills pursuant to SCR-P.D. 113.
(3) *Minimum Sale Price.* A private sale shall not be confirmed at less than two-thirds of the appraised value.
(4) *Order Nisi, Increased Offer; Confirmation.* At least 10 days before confirmation of a private sale the terms thereof shall be published in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a 10 per cent net increase over the price specified in such published offer.

(d) Account; Distribution of Proceeds. Promptly after the settlement of a private or public sale made under this rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court may direct.

(e) Compensation to Officer Making Sale. The compensation of the trustee or officer making a sale hereunder shall be 5 per cent on the 1st $3,000, plus two and one-half percent on the next $10,000, plus 1 percent on any amount in excess of $13,000 dollars of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the compensation of the trustee or officer making the sale shall be computed and

paid at the same rate upon the entire sales price. The compensation may be increased or reduced by the Court for special cause shown in writing.
(f) Sale of Personal Property. Unless otherwise herein provided, a sale of personal property under an order of this Court shall be governed by Title 28, Section 2004, U.S. Code, in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court. The officer making sale shall account and distribute as provided by paragraph (d) hereof. The officer shall be allowed such compensation and expenses as the court may fix.