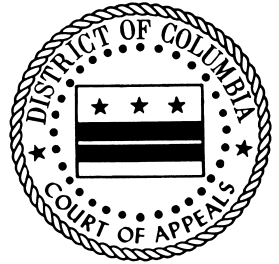


No. 22-CV-0200

DISTRICT OF COLUMBIA COURT OF APPEALS



Clerk of the Court

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THEODORE ALBERT NELBACH,
Appellant,

v.

WILLOW NELBACH,
Appellee.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION, CIVIL ACTION No. 2016 CA 00768 B

BRIEF OF APPELLEE, WILLOW NELBACH

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STATEMENT PURSUANT TO RULE 28(a)(2)(A)

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Appellee:

Willow Nelbach

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“ <i>Answer</i> ”	Answer filed by Life Tenant on July 29, 2021, (Appx. p.16)
“ <i>Appx. p. __.</i> ”	Citation to Appendix
“ <i>Complaint</i> ”	Complaint filed by Remainderman on June 28, 2021 (Appx. pp.1-8)
“ <i>Fact</i> ”	Paragraph in Remainderman’s Statement of Undisputed Material Facts (Appx. pp.19-22)
“ <i>Life Tenant</i> ”	Defendant/Appellant, Theodore Albert Nelbach
“ <i>Notice of Tax Delinquency</i> ”	Notice of Delinquency issued by the District of Columbia dated April 29, 2021 (Appx. pp.27-30)
“ <i>Order</i> ”	Order issued by the Superior Court on February 23, 2021, granting summary judgment to Remainder (Appx. pp.68-73)
“ <i>Opposition</i> ”	Opposition to the Motion for Summary Judgment filed by Life Tenant on November 1, 2021 (Appx pp.44-59)
“ <i>Property</i> ”	Real property and improvements located at 4517 Clay Street, NE, Washington DC 20019

“Remainderman”.....Plaintiff/Appellee, Willow Nelbach

“Reply”Reply to the Opposition filed on November 3, 2021, by Remainderman

“Statement of Undisputed Material Facts”Statement of Undisputed Material Facts filed on August 9, 2021, by Remainderman

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STATEMENT PURSUANT TO RULE 28(a)(5)

This is an appeal pursuant to D.C. Code §§ 11-721 from the February 23, 2022, Order of the Superior Court, Civil Division, in Case No. 2021 CA 002048 R(RP) which granted Willow Nelbach’s Motion for Summary Judgment. The foregoing order was final and disposed of the parties’ claims.

I. STATEMENT OF THE ISSUES

ISSUE ONE: Whether Life Tenant's failure to pay and keep current real estate taxes and other charges accruing against Property for more than four years constituted waste of the Property.

ISSUE TWO: Whether the Superior Court had the authority to terminate a Life Tenant's interest in the Property and award treble damages to Remainderman.

II. STATEMENT OF THE CASE

A. Introduction: Nature of the Case

Remainderman owned a remainder interest in Property subject to a life estate held by Life Tenant. Life Tenant ceased paying real estate taxes, penalties, late fees, and interest accruing against the Property for more than four years. As a result, the District of Columbia threatened to sell the Property at a tax foreclosure sale, and Remainderman intervened by paying the taxes and charges to rescue her interest. In this appeal, Life Tenant now challenges whether his refusal to pay the real estate taxes and charges constituted waste of the Property and the Superior Court's authority to terminate his life interest and award treble damages to Remainderman.

B. Procedural History and Disposition

On June 28, 2021, Remainderman filed her Complaint seeking the termination of Life Tenant's interest and recovery of damages caused by Life Tenant's refusal to pay taxes and other charges against the Property. Appx. pp.1-6. On July 29, 2021, Life Tenant filed a one-page Answer admitting his failure to pay taxes and charges against the Property. Appx. p.16.

On August 9, 2021, Remainderman moved for summary judgment and filed a Statement of Undisputed Material Facts, (Appx. pp.19-22), Memorandum in Support of Summary Judgment, (Appx. pp.34-39), and Affidavit of Remainderman (Appx. 23). On November 1, 2021, Life Tenant responded by filing an Opposition conceding that he failed to pay the real estate taxes and charges for four years and that an outstanding balanced still exists. Appx. p.42. Life Tenant's Opposition opposed summary judgment primarily based upon numerous nonmaterial assertions by counsel that were not part of the record or supported by any affidavit. Appx. pp.45-46 (asserting, inter alia, that Life Tenant paid some taxes, the Property was occupied, Life Tenant was unemployed, Life Tenant intended to pay future taxes, etc.). Notably, the Opposition challenged neither the Superior Court's authority to terminate his life interest nor its ability to award treble damages to Remainderman. Appx. pp.46-48.

On February 23, 2022, the Superior Court entered the Order granting summary judgment. The Order specifically finds that Life Tenant committed waste by failing to pay \$8,149.84 in real estate taxes and charges against the Property, (including \$6,501.94 paid by the Remainderman and another \$1,647.90 due and outstanding). Appx. pp.68-73. It further terminated Life Tenant's interest in the Property and awarded treble damages in the amount of \$23,580.03 to Remainderman. Appx. pp.72.

III. STATEMENT OF THE FACTS

In July 2015, Life Tenant and Remainderman received title to the Property as a testamentary gift pursuant to a deed that conveyed the Property to Life Tenant “for his life, with the remainder interest in [Remainderman], her heirs, personal representatives, successors, and assigns forever.” Appx. p.19-20 at Fact 2-4. In 2017, Life Tenant ceased paying certain real estate taxes and charges assessed against the Property by the District of Columbia. Appx. p.20 at Fact 9. Over the next four (4) years, Life Tenant accrued approximately \$7,000 in back real estate taxes, penalties, late fees, and interest. Appx. p.20 at Facts 9-10. On April 29, 2021, the District of Columbia sent a “Notice of Tax Delinquency” to Life Tenant warning him that the Property would be sold at a tax sale if the outstanding liability was not paid before May 31, 2021. Appx. p.20 at Fact 10; Appx. pp. 27-30.

On May 18, 2021, Remainderman sent a letter to Life Tenant demanding that Life Tenant immediately pay the outstanding tax liabilities to avoid the pending tax foreclosure sale. Appx. p.21 at Fact 11. Life Tenant ignored Remainderman's demands. Appx. p.21 at Fact 12. Thus, on May 29, 2021 – just two days before the tax foreclosure sale – Remainderman paid \$5,600.00 to the District of Columbia to rescue her interest. Appx. p.21 at Fact 12. In June 2021, the District of Columbia assessed additional real estate taxes against the Property, and Remainderman paid another \$901.94 in real estate taxes to protect the property. Appx. p.67. At least another \$1,630.00 of taxes and charges remained unpaid. Appx. p.21 at Fact 14; Appx. p.46.

IV. SUMMARY OF THE ARGUMENT

Under well-established District of Columbia law, a life tenant is obligated to pay and keep current all real estate taxes and charges assessed against real property to protect the interest of his remainderman. The failure of a life tenant to pay such real estate taxes and charges constitutes waste, for which DC Code §§ 42-1601 and -1603 affords the remedies of termination of the life estate and treble damages.

In this case, Life Tenant committed waste by failing to pay \$8,149.84 in overdue real estate charges, penalties, late fees, and interest accruing against the real property for over four years. The Superior Court therefore correctly terminated Life Tenant's life estate and awarded treble damages to Remainderman.

V. STANDARD OF REVIEW

An appellate court reviews a grant of summary judgment de novo, applying the same standard as the trial court did in ruling on the motion. Washington v. District of Columbia, 137 A.3d 170, 173 (D.C. 2016). Thus, an award of summary judgment should be affirmed if the Court concludes that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Id.

VI. ARGUMENT

A. ISSUE ONE: Whether Life Tenant's Failure to Pay Taxes and Charges Assessed Against the Real Property for Four Years Constitutes Waste

1. Life Tenant's Failure to Pay Real Estate Taxes and Charges Constitutes Waste

Waste is defined as the misuse or neglect of property by one in rightful possession to the detriment of another's interest in the same property. Michael Allen Wolf, Powell on Real Property, § 56.01 (Desk ed. 2009). It is well established that a life tenant owes a duty to his remainderman to preserve the estate in a manner that does not diminish or destroy its value. See D.C. CODE § 42-1601 and -1603. For more than a century, the District of Columbia has recognized a life tenant's obligation includes a duty to keep paid all current taxes, periodic charges, and interest on encumbrances on the land. Elliot v. Lamon, 1 MacArth. 647 (D.C.

1874) (holding that there was “no question as to the personal liability” of a life tenant to pay taxes and charges); Atkins v. Best, 27 App. D.C. 148 (1906) (noting that a plaintiff alleged that the life tenant failed to pay taxes accruing on the property); D.C. Code § 42-1601 and -1603. As the Superior Court noted, “these well-established cases remain good law in the District of Columbia.” Appx. p.71.

Notwithstanding these cases, Life Tenant argues that his failure to pay real estate taxes is not waste of the remainderman’s interest under District of Columbia law. He fails to cite a single binding or persuasive authority in support of that suggestion. And no such support exists. In fact, an overwhelming number of jurisdictions recognize a tenant’s duty to preserve the estate by paying and keeping current taxes and other charges associated with real property. See, i.e., Matteson v. Walsh, 947 N.E.2d 44, 48 (Mass. App. 2011) (holding that life tenant commits waste when he “permit[s] the real estate taxes assessed to the property to remain unpaid to the point that the tax authority records a tax taking”); Pike v. Wassell, 94 U.S. 711, 715 (1876) (“The defendants admit that they have determined not to pay the taxes upon the property. The danger of incumbrance by reason of this failure to perform their duties as tenants for life is, therefore, imminent, and the case a proper one for a court of equity to interfere and grant appropriate relief.”); Chapman v. Chapman, 526 So. 2d 131, 135 (Fla. App. 1988) (“It is well settled that life tenants are bound in law to pay property taxes during the continuance of their estate.

Failure to pay taxes constitutes waste.”); First Nat’l Bank v. Clark & Lund Boat Co., 229 N.W.2d 221, 223 (Wisc. 1975) (holding that failure to pay taxes or interest depreciates the value of the interest and amounts to waste). Newman v. Van Nortwick, 164 P. 61, 62 (Wash. 1917) (holding “the payment of taxes is necessary to the preservation of the property” and “not to pay them is waste”); Travelers Ins. Co. v. 633 Third Assoc., 14 F.3d 114, 123 (2nd Cir. 1994) (the failure to pay property taxes constitutes waste); Nusbaum v. Shapero, 228 N.W. 785, 789 (Mich. 1930) (same); Grieve v. Huber, 266 P. 128, 134 (Wyo. 1928) (same); Mutual Benefit Life Ins. Co. v. Canby Inv. Co., 251 N.W. 129, 131 (Minn. 1933) (same); Hausmann v. Hausmann, 596 N.E.2d 216, 219 (Ill. App. Ct. 1992) (same); see also, RESTATEMENT (FIRST) OF PROPERTY, § 129 (1936); RESTATEMENT (FIRST) OF PROPERTY, § 139 (1936); Michael Allen Wolf, Powell on Real Property, § 56.05[2] (Desk ed. 2009) (noting that “the life tenant must pay for current property taxes”).

In the present case, Life Tenant neglected to pay real estate taxes and charges against the Property for more than four years. The District of Columbia warned him that a tax sale was imminent and Remainderman demanded that Life Tenant immediately pay the outstanding balance and rescue the Property from the tax sale. But Life Tenant did nothing. On May 29, 2021 – just one day prior to the scheduled tax foreclosure sale – Remainderman paid \$5,600.00 to the District of

Columbia to rescue the Property. And she paid another \$901.94 when new taxes were later assessed shortly thereafter. Life Tenant's failure to keep the real estate taxes and charges current constitutes waste.

2. **A Remainderman Is Not Required to Suffer a Divesture of Title Before Seeking Relief for Waste**

Life Tenant argues that his failure to pay the taxes and charges does not constitute waste because "no tax taking has been recorded" by District of Columbia's taxing authority and/or the real property was subject to a COVID-19 "foreclosure moratorium." Appellant Brief at 5-6. But District of Columbia law does not require a remainderman to wait until after she is divested from her interest to obtain relief for waste. See Elliot, 1 MacArth. 647 (terminating a life estate through a forced sale because the life tenant's failure to pay taxes jeopardized the remainderman's interest). Such a requirement would render other statutes superfluous. For example, D.C. Code § 42-1603 permits a remainderman to recover the property through the termination of the life estate when the life tenant commits waste. It is impossible to grant that relief if both the life tenant and remainderman's interest in the property must first be divested before that remedy can be awarded.

Indeed, Life's Tenant's argument here is nearly identical to the argument rejected by an Illinois appellate court in Hausman. The life tenant in that case alleged that an order finding that he wasted the property by failing to pay real

estate taxes was “not particularly logical when considering the lengthy and detailed procedures... which must be fulfilled before divestiture of title in favor of a tax purchaser can occur.” Hausmann, 596 N.E.2d at 219. Stated simply, he argued that he had not wasted the property because his remainderman had not yet been divested of title. The court rejected that argument, reasoning

Waste... is more often a process, a series of acts or omissions, rather than a singular event. A structure need not completely collapse before a cause of action in waste will be found to exist. To told otherwise would be to deny an adequate remedy until after the waste was completed, or nearly so. Such a ruling would belie the very nature of equity, which is fairness. Waste, when possible, should be arrested rather than allowed to run its full course.

Id. Thus, Life Tenant’s failure to pay real estate taxes and charges constitutes waste irrespective of whether Remainderman’s title was actually divested.

Life Tenant similarly argues that Remainderman’s title was never threatened because he “paid off the remaining tax arrears of approximately \$1630 [sic].” Appellant Brief p.2. Life Tenant cites no facts or evidence before the Superior Court to support his assertion. And there were none. The uncontested evidence before the Superior Court showed a remaining balance of at least \$1,600 is still outstanding. Appx. p.24 at Fact 13; Appx. pp.31-33; Appx. p.53; Appx. pp.71-72. Life Tenant expressly admitted the same in his Opposition before the court below. Appx. p.46 (“As of present, the balance is approximately \$1,630.”). And even if such facts were in the record, then the real estate taxes and charges were only

satisfied because Remainderman paid more than \$6,000 in back taxes, penalties, and interest. Life Tenant cannot assert that Remainderman suffered no injury merely because she acted to save her own interest in the Property.

Life Tenant also asserts that Remainderman was not threatened because the District of Columbia cancelled the tax foreclosure sale. See Appellant Brief at 5. The Superior Court disagreed with that fact and argument. It noted that the District of Columbia's Notice of Delinquency dated April 29, 2021, states the "failure to pay taxes immediately may have serious consequences, which may include loss of title to the property" and that "to avoid tax sale you must pay \$6,955.78 by May 31, 2021." Appx. p.26-30. Under this threat, the Remainderman paid \$5,600 toward the taxes and charges on May 30, 2021. Appx. at 70. She made another payment on August 13, 2021, because she "feared that Defendant's failure to pay newly assessed real estate taxes again jeopardized her interest in the Property." Appx. at 70. The sole evidence of the cancellation of the tax foreclosure sale was a Notice of Delinquency by District of Columbia dated August 25, 2021 – three months after Remainderman's first payment. Under such circumstances, Remainderman had no choice but to remit the payment to preserve her interest.

Finally, Life Tenant asserts that the property was subject to a tax foreclosure moratorium because the "property is an occupied property" and "it is occupied by tenants who received HUD vouchers." Again, Life Tenant's argument relies upon

facts that were never before the Superior Court. He directs this Court to Page 46 of the Appendix, which only contains his counsel's brief in opposition to the motion for summary judgment. However, statements of counsel are not evidence, and Life Tenant supplied the Superior Court with no affidavits, sworn statements, or other documents that support these bare assertions. See SUP. CT. R CIV. PRO. 56(c)(4) and (e). Moreover, as discussed above, Remainderman was not required to wait until her interest was divested through foreclosure before obtaining relief for Life Tenant's waste. Life Tenant's actions degraded the value of Remainderman's interest, and she was obligated to do something to arrest and ameliorate the waste irrespective of whether a foreclosure was actually pending.

B. ISSUE TWO: The Superior Court Had the Authority to Terminate the Life Interest and Award Treble Damages to the Remainderman

The Superior Court held that Remainderman was equitably entitled to a termination of Life Tenant's interest in the Property and treble damages a result of Life Tenant's failure to pay real estate taxes and charges for more than four years. Appx. pp.68-73. The trial court had the authority to award those statutory remedies.

1. The Court Had the Authority to Terminate the Life Estate

A remainderman who is aggrieved by his life tenant's waste of real property may assert claims against the latter for equitable relief. D.C. CODE § 42-1601.

D.C. CODE § 42.1603 identifies the forfeiture of a life tenant's interest in the property as one available remedy if the waste threatens to disinherit the remainderman of her interest. It states, in relevant part:

It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate.

Id. In this case, Life Tenant's refusal to pay the tax assessments, late charges, penalties, and interest continued for four years culminated in the threat of tax sale that would divest Remainderman's entire interest in the Property. The unpaid taxes, penalties, and 18% interest also substantially impaired the value of Remainderman's interest in Property because they operate as a continuing lien against Property which may be enforced against Remainderman's interest. Under such circumstances, the Court had the authority to terminate the life interest as an equitable remedy under D.C. Code § 42-1603.

2. The Court Had the Authority to Award Treble Damages

District of Columbia law also authorized the Court to award treble damages to Remainderman for unpaid taxes and charges. D.C. Code § 42-1601 provides:

A man from henceforth shall have a writ of waste in chancery against him that holdeth by law, or otherwise for term of life, or for term of years, and he which shall be attained of waste, shall lease the thing that he hath wasted, and moreover shall recompense *thrice* so much as the waste shall be taxed at.

Id. (emphasis added). D.C. Code § 42-1603 further states that a remainderman may “recover against [the life tenant] ... **treble** damages.” (Emphasis added). In this case, Life Tenant committed waste by failing to pay \$8,149.84 of real estate taxes and charges against the Property, requiring Remainderman to pay the taxes and charges to preserve her interest. Thus, the Court had the authority to award treble damages under D.C. Code §§ 42-1601 and -1603.

3. There Is No “Permissive Waste” Exception in D.C. Code §§ 42-1601 and 1602

Life Tenant argues that his undisputed failure to pay real estate taxes and charges assessed against the Property was only “permissive” waste, and therefore, the Court lacked the authority to terminate his life interest or award treble damages under D.C. Code §§ 42-1601 and -1603. But the plain language of those sections neither distinguish between permissive and voluntary waste nor include any such exception. See D.C. CODE §§ 42-1601 and -1603.

In support of his position, Life Tenant asserts that D.C. Code §§ 42-1601 and -1603 (and its early statutory ancestors) apply “only to voluntary waste” because the sections reference a life tenant who “makes” or “commits” waste of the property rather than passively neglecting it. See Appellant Brief at p.7. That position is ahistorical. The Statutes of Gloucester and Marlbridge, (from whence D.C. Code §§ 42-1601 and -1603 originated), were universally received and

understood to apply to both permissive and voluntary waste at the time of their passage. Moore v. Townshend, 33 N.J.L. 284, 302 (1868). The same English courts that first construed these statutes confirmed that understanding.

The early English Statutes of Marlbridge and Gloucester stated that certain persons must not “make” waste. This has been the basis for the argument that these statutes did not refer to “permissive” waste at all. Early English decisions repudiated this argument, holding that one could “make waste,” with equally destructive consequences, **either by action or inaction.**

Michael Allen Wolf, Powell on Real Property, § 56.05[2] (Desk ed. 2009) (emphasis added); See also, Moore v. Townshend, 33 N.J.L. 284, 302 (1868) (noting that the “settled construction” of the Statute of Marlbridge and Gloucester “included permissive waste as well as voluntary waste”). Here, the District of Columbia adopted common law statutes presumably knowing that their settled construction included remedies for both voluntary and permissive waste. The District of Columbia never modified these statutes to exclude permissive waste, and therefore, this Court should likewise decline to do so.

Life Tenant cites Beliveau v. Beliveau, 217 Minn. 235 (1944), for the proposition that other states, such as Minnesota, do “not consider tax arrears to be voluntary waste.” Appellant Brief at 9. Beliveau does not support that position. In fact, it suggests exactly the opposite. In Beliveau, a life tenant of real property (with the power to sale) failed to make necessary and reasonable repairs, pay current taxes, pay interest, or appropriately protect the real estate from the

infestation of “noxious weeds.” The trial court ruled that the life tenant’s actions constituted waste and appointed a trustee to sell the property and divide the proceeds. In affirming the trial court’s ruling, Supreme Court of Minnesota stated:

[Life tenant’s] failure to pay the taxes and make necessary reasonably repairs of the buildings and fences constituted waste. While there is some conflict among the authorities, we think the better rule is that a life tenant **commits waste** by permitting farm lands to become infested with noxiously weeds which do injury to the freehold.

Her failure to pay interest on the mortgage, for which default the mortgage was foreclosed and the property placed in danger of being lost, not only to her but also to the remaindermen, was in violation of her duties as the life tenant.

Id. at 243 (citations omitted) (emphasis added). Like historical courts, Beliveau employs the term “commits waste” to a life tenant who simply neglected the property’s maintenance, taxes, and mortgage interest payments. And Beliveau makes no attempt to distinguish between the life tenant’s “commissive” and “permissive” waste of the property or the remedies for the same.

The history of the Statutes of Gloucester and Marlbridge and the holding in Beliveau are also consistent with the majority of American jurisdictions that abandoned any distinction between “voluntary” and “permissive” waste, thereby allowing permissive waste to serve as the basis for effective relief. See RESTATEMENT (THIRD) OF PROPERTY, Mortgages, 4.6, cmt. b (1997) (noting that “the common-law distinction between ‘voluntary’ (intentional) and ‘permissive’

(negligent) waste is no longer followed”); Michael Allen Wolf, Powell on Real Property, § 56.05[2] (Desk ed. 2009) (stating that “permissive waste can be the basis of effective relief in a majority of American jurisdictions”).

This Court should further reject Life Tenant’s invitation to write an implied “permissive waste exception” into the D.C. Code §§ 42-1601 and -1603’s express language because such an exception would contradict the very purpose of those statutes. The statutes are intended to protect a remainderman from a life tenant’s “waste and destruction” that results in “the disinheritance of them in reversion.” See D.C. CODE § 42-1603. Unlike typical “permissive waste” cases (i.e., leaky roofs, unkept landscaping, disrepair, etc.), Life Tenant’s waste of the Property in this case threatened to completely divest Remainderman of her interest in the Property through a tax foreclosure sale. She would be literally “disinherited” of her interest. That divestment is equally destructive of Remainderman’s interest whether it was accomplished by Life Tenant’s action (voluntary waste) or inaction (permissive waste), and it is exactly what D.C. Code §§ 42-1601 and -1603 are intended to ameliorate.

VII. CONCLUSION

Life Tenant committed waste of the Property by failing to pay real estate taxes, penalties, late fees, and interest that accrued against the Property for more than four years, and accordingly, the Superior Court had the authority to terminate

the life interest and award treble damages to the Remainderman. For those reasons, Remainderman respectfully requests that this Court affirm the Superior Court's Order granting summary judgment to Remainderman.

Respectfully submitted,
WILLOW NELBACH,
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of September 2022, that a true copy
of the foregoing was sent, in the manner indicated, to:

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Via Electronic Filing System and Email

/s/ David E. Bateman
Counsel

District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

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

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ David E. Bateman
Signature

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22-CV-0200
Case Number(s)

09/02/2022
Date