

**District of Columbia  
Court of Appeals**

**F I L E D**  
AUG 21 2019  
District of Columbia  
Court of Appeals

**No. 18-CV-1031**

MELISSA L. BARNETTE,

Appellant,

**2015 CAR 9850**

PROF-2013-M4 LEGAL TITLE TRUST,  
BY U.S. BANK NATIONAL ASSOCIATION,  
AS LEGAL TITLE TRUSTEE,

Appellee.

BEFORE: Fisher and McLeese, Associate Judges,  
and Nebeker, Senior Judge.

**J U D G M E N T**

On consideration of this court's November 30, 2018, order limiting this appeal to review of only the August 27, 2018, order denying appellant's non-tolling Super. Ct. Civ. R. 60(b) motion; appellee's motion for summary affirmance; appellant's opposition and the reply thereto; appellant's motion for leave to file the

**APPENDIX A-1**

lodged surreply; the opposition and reply thereto; appellant's brief and appendix; and the record on appeal; it is

ORDERED that appellant's motion for leave to file the lodged surreply is denied. See D.C. App. R. 27(a)(6) (providing that after a party files a reply "[n]o further pleadings may be filed except with the court's permission and for extraordinary cause"). It is

FURTHER ORDERED that appellee's motion for summary affirmance is granted. See *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). The trial court did not abuse its discretion in denying appellant's Super. Ct. Civ. R. 60(b) motion when, among other things, appellant only offered conclusory allegations of fraud and forgery and did not present a prima facie adequate defense to the default. *Farrow v. J. Crew Grp. Inc.*, 12 A.3d 28, 37 (D.C. 2011) ("Appellate review of denial of a 60(b) motion is limited to whether the trial court abused its discretion in denying the motion.") *Carrasco v. Thomas D. Walsh, Inc.*, 988 A.2d 471, 475 (D.C. 2010) (recognizing the following five factors the trial court should consider in evaluating whether to grant relief under this provision: "(1) whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether he presents a prima facie adequate defense; (4) whether he acted promptly in seeking relief; and (5) the potential prejudice to the non-moving party from granting the motion"). To the extent she alleges appellee prevented her from curing the default, appellant never offered any evidence to support these claims. *Cf. Must v. Cont'l Ins. Co.*, 644

A.2d 999, 1002 (D.C. 1994) (“Mere conclusory allegations on the part of the non-moving party are insufficient to stave off the entry of summary judgment.”). In light of this disposition, we need not address any remaining issues raised by appellant on appeal. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY  
DIRECTION OF THE COURT:

/s/ Julio A. Castillo  
JULIO A. CASTILLO  
Clerk of the Court

Copies mailed to:

Honorable Jennifer DiToro

QMU — Civil Division

Melissa L. Barnette  
2010 13th Street, NW  
Washington, DC 20009

Copies e-served to:

Linda M. Barran, Esquire

Kevin Hildebeidel, Esquire                      cml

**District of Columbia  
Court of Appeals**

**No. 18-CV-1031**

09/12/2019

MELISSA L. BARNETTE,

Appellant,

**CAR9850-15**

PROF-2013-M4 LEGAL TITLE TRUST,  
BY U.S. BANK NATIONAL ASSOCIATION,  
AS LEGAL TITLE TRUSTEE,

Appellee.

Zabrina Dempson, Clerk  
Superior Court of the District of Columbia

Dear M. Dempson:

The attached certified copy of the Decision in this case, pursuant to Rule 41(a) of the Rules of this Court, constitutes the mandate issued this date.

JULIO A. CASTILLO  
Clerk of the Court

**APPENDIX B**

Filed  
D.C. Superior Court  
08/27/2018 14:42PM  
Clerk of the Court

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
Civil Division

US BANK, NATIONAL ASSOCIATION, et al.  
Plaintiff,

v. Case No. 2015 CA 009580 R(RP)  
Judge Jennifer A. Di Toro

MELISSA BARNETTE, et al.,  
Defendants.

**ORDER**

This matter is before the Court on Defendant Melissa Barnette's *Amended Motion to Reinstate Civil Action to Vacate Trial Court's Orders, Set Aside Foreclosure Sale of Real Property Conducted on June 15, 2017, Court Appointed Trustees Deed Dated September 15, 2017, Vacate Wrongful Default Judgment Entered against Deft John Rest on October 21, 2016* filed on May 18, 2018. Plaintiff PROF-2013-M4 Legal Title Trust filed its Opposition on June 4, 2018 and Defendant Barnette filed a Reply on June

APPENDIX C-1

28, 2018. For the reasons discussed herein, the Court denies the Motion.

### **Factual and Procedural Background**

Plaintiff brought suit to foreclose upon a Deed of Trust in default under D.C. Code 42-816 against Defendant's John Reosti and Melissa Barnette on December 22, 2015. Defendants, at the time, were the record owners of the real property located at 1110 Q Street NW, Washington, D.C. 20009. The property was encumbered with a Deed of Trust on June 25, 2007, securing a Note in the original principal amount of \$300,000.00. On April 20, 2017, the Court granted Plaintiff's Motion for Summary Judgment and entered an Order and Decree for Sale directing the Trustees to conduct a sale as set out in the Court order. The Trustees conducted the Sale on June 15, 2017, and on August 8, 2017, the court entered an Order Granting Motion to Ratify the Sale of Real Property Conducted on June 15, 2017, allowing the Trustees to go to settlement and issue a Trustees' Deed. The Trustees went to settlement with the 3rd party purchaser on September 15, 2017, and recorded a Court Appointed Trustees; Deed on September 19, 2017. Plaintiff subsequently filed a Motion to Ratify Accounting to which Defendant Reosti consented to.

Defendant Barnette did not file an opposition to the Motion for Summary Judgement, the Motion to Ratify Sale, or the Partial Consent Motion to Ratify the Accounting, Release the Bond, and Close the Case. The Court granted the partial Consent Motion to Ratify Accounting, Release the Bond, and Close the Case on December 7, 2017. Defendant filed her first Motion to

Reinstate and Vacate on April 20, 2018, which Plaintiff opposed on May 4, 2018. Defendant Barnette filed this Amended Motion to Vacate on May 18, 2018, seeking to have the Court reinstate the civil action, vacate the Court's judgment order set aside the foreclosure sales, and dismiss the foreclosure complaint pursuant to Rule 60(b) of the Superior Court Rules of Civil Procedure.

### **Legal Standard**

Under Rule 60(b) of the Superior Court Rules of Civil Procedure, the Court may relieve a party from an order for reasons such as “mistake, inadvertence, surprise, or excusable neglect; . . . or any other reason justifying relief from the operation of the judgment.” Sup. Ct. Civ. R. 60(b). “The standard [for relief] under Rule 60 (b)(6) is a stringent one, requiring a showing of unusual or exceptional circumstances.” *Puckrein v. Jenkins*, 884 A.2d 46, 60 (D.C. 2005) (citations omitted). The rule is reserved for “extraordinary situations justifying an exception to the overriding policy of finality.” *Clement v. District of Columbia Dep’t of Human Servs.*, 629 A.2d 1215, 1219 (D.C. 1993) (citation omitted). “A necessary condition to such relief is that circumstances beyond the moving party’s control prevented timely action to protect its interests.” *Cox v. Cox*, 707 A.2d 1297, 1299 (D.C. 1998) (citations, internal alterations and quotation marks omitted). In evaluating whether to grant relief pursuant to Rule 60(b), a court should consider the following factors: (1) whether there was actual notice; (2) whether the

movant acted in good faith; (3) whether the movant resent a prima facie adequate defense; (4) whether the movant acted promptly; and (5) any prejudice to the non-moving party. *Carrasco v. Thomas D. Walsh, Inc.* 988 A.2d 471, 475 (D.C. 2010).

### Discussion

Defendant Barnette filed her Amended Motion to Vacate on May 18, 2018, more than a year after judgment was entered, and without any explanation for her delay and failure to raise these issues while the case was open. In the Amended Motion to Vacate Defendant Barnette shows no unusual or exceptional events that prevented her from litigating this case prior to the entry of judgment. Instead, Defendant Barnette seeks to circumvent this Court's rules by asserting her defenses more than a year after judgment was entered. Defendant Barnette has had notice of this case since 2015. She filed an Answer, appeared at the Initial Scheduling Conference, and served discovery requests however, she failed to file oppositions to Motion for Summary Judgment, Motion to Ratify the Sale, and Partial Consent Motion to Ratify the Accounting. Rule 60(b) is not intended "to enable a party to complete presenting [its] case after the court has ruled against [it]." *District No. 1 - Pacific Coast District v. Travelers Casualty & Surety Co.*, 782 A.2d 269, 278 (D.C. 2001). Moreover, Defendant Barnette has failed to present any prima facie defense to the default and instead makes the same conclusory allegations of fraud that are unsupported by the record



in this case. Therefore, Defendant Barnette has provided no legal basis by which the Court can vacate its order. Accordingly, the Motion is denied.

Accordingly, it is this 27th day of August, 2018, hereby,

**ORDERED**, that Defendant Melissa Barnette's *Amended Motion to Reinstate Civil Action to Vacate Trial Court's Void Orders, Set Aside Foreclosure Sale of Real Property Conducted on June 15, 2017, Court Appointed Trustees Deed Dated September 15, 2017, Vacated Wrongful Default Judgment Entered against Deft John Reosti on October 21, 2016* is **DENIED**.

**SO ORDERED.**

/s/ Jennifer A. Di Toro  
Judge Jennifer A. Di Toro  
Associate Judge  
*Signed in Chambers*

Copies to:

Linda Barran, Esq.  
E-served via Casefilexpress  
*Counsel for Plaintiff*

Melissa Barnette  
2010 13th Street NW  
Washington, DC 20009  
*Pro Se Defendant*

John Reosti  
11705 Camelot Way  
Fredericksburg, VA 22407  
*Defendant*

Filed  
D.C. Superior Court  
06/29/2018  
Clerk of the Court

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
Civil Division

US BANK, N.A, et al.  
Plaintiff,

v. Case No. 2015 CA 009580 R(RP)  
Judge Jennifer A. Di Toro

MELISSA BARNETTE, et al.,  
Defendants.

**ORDER**

Presently before the Court is Defendant Melissa Barnette's Motion for Leave to Exceed 20 page Limitation, filed on April 20, 2018, and Ms. Barnette's *Motion to Reinstate Civil Action and to Vacate Court's Orders Granting Motion for Summary Judgment*, filed on April 20, 2018. On May 18, 2018 Plaintiff filed an *Amended Motion to Reinstate Civil Action to Vacate Trial Court's Void Orders, Set Aside Foreclosure Sale of*

**APPENDIX D-1**

*Real Property Conducted, Court Appointed Trustees Deed Dated, Vacate Wrongful Default Judgment Entered against Defendant John Reosti and filed another Motion for Leave to Exceed the Twenty Page Limitation. Accordingly, the Court denies as moot the April 20, 2018 Motion to Reinstate Civil Action and Vacate Court's Orders Granting Motion for Summary Judgment and the April 20, 2018 Motion for Leave to Exceed 20 Page Limitation. An Order is forthcoming on the May 18, 2018 Amended Motion to Reinstate Civil Action to Vacate Trial Court's Void Orders, Set Aside Foreclosure Sale of Real Property Conducted, Court Appointed Trustees Deed Dated, Vacate Wrongful Default Judgment Entered against Defendant John Reosti.*

Accordingly, it is this 26<sup>th</sup> day of June, 2018, hereby,

**ORDERED**, that the April 20, 2018 *Motion for Leave to Exceed 20 page Limitation* is **DENIED AS MOOT**. It is further

**ORDERED**, that the April 20, 2018 *Motion to Reinstate Civil Action and to Vacate Court's Orders Granting Motion for Summary Judgment* is **DENIED AS MOOT**. It is further **ORDERED**, that the May 18, 2018 *Motion for Leave to Exceed 20 page Limitation* is **GRANTED**.

**SO ORDERED.**

/s/ Jennifer A. Di Toro  
Judge Jennifer A. Di Toro  
Associate Judge  
*Signed in Chambers*

Copies to:

Linda Barran, Esq.  
E-served via Casefilexpress  
*Counsel for Plaintiff*

Melissa Barnette  
2010 13th Street NW  
Washington, DC 20009  
*Defendant*

John Reosti  
11705 Camelot Way  
Fredericksburg, VA 22407  
*Defendant*

1006844377

MIN: [REDACTED]

Loan Number: [REDACTED]

### ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*-Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

DATE OF NOTE: [REDACTED] INTEREST RATE: [REDACTED] PERCENT  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

#### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay the \$ [REDACTED] (this amount is called "Principal"), plus interest, to the order of Lender [REDACTED]. I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note, Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

#### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of [REDACTED]%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

#### 3. PAYMENTS

##### (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on AUGUST 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on [REDACTED], I still owe amounts under this Note, I will pay those amounts to full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. BOX 806911, KANSAS CITY, MISSOURI 64184-8911.

or at a different place if required by the Note Holder.

##### (B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of \$ [REDACTED]. This amount may change.

##### (C) Monthly Payment Changes

Changes to my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

MULTISTATE ADJUSTABLE RATE NOTE-LIBOR SIX-MONTH INDEX  
(AS PUBLISHED IN THE WALL STREET JOURNAL)-Single Family  
Fannie Mae MODIFIED INSTRUMENTS  
Page 1 of 6

Form 3520 1/01  
DocketMagie eForms 800-549-1202  
www.docketmagie.com

## APPENDIX E-1

#### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

##### (A) Change Dates

The interest rate I will pay may change on the 1st day of JULY, 2009, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

##### (B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

##### (C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding FIVE AND 150/1000 percentage points ( 5.150 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

##### (D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.900 % or less than 8.900 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE AND 000/1000 percentage point(s) ( 1.000 %). From the rate of interest I have been paying for the preceding 6 months, my interest rate will never be greater than 15.900 %. My interest rate will never be less than 8.900 %.

##### (E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

##### (F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

#### 5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayments to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limits; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of the costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requests a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**10. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

#### 11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the provisions given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower's.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.





MIN:

Loan Number:

**ADJUSTABLE RATE NOTE**  
**(LIBOR Six-Month Index (As Published in *The***  
***Wall Street Journal*)-Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JUNE 25, 2007  
[Date]

INDEPENDENCE  
[City]

OHIO  
[State]

1110 Q ST NW, WASHINGTON,  
DISTRICT OF COLUMBIA 20009  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$300,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is NOVASTAR MORTGAGE, INC., A VIRGINIA CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments un this Note is called the "Note Holder."

**APPENDIX F-1**

## **2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.9000 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

## **3. PAYMENTS**

### **(A) Time and Place of Payments**

I will pay principal and Interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on AUGUST 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. BOX 808911, KANSAS CITY, MISSOURI 64184- 8911 or at a different place if required by the Note Holder.

### **(B) Amount of My initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 2,392.31. This amount may change.

### **(C) Monthly Payment Changes**

Changes in my monthly payment will reflect

changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

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MULTISTATE ADJUSTABLE	Form 3520 1/01
RATE NOTE-LIBOR SIX-MONTH	<i>DocMagiceForms</i> 800-649-1382
INDEX (AS PUBLISHED IN <i>THE WALL</i>	<i>www.docmagic.com</i>
<i>STREET JOURNAL</i> )-SINGLE FAMILY	

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#### **4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

##### **(A) Change Dates**

The interest rate I will pay may change on the 1st day of JULY, 2009, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

##### **(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of Interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding FIVE AND 150/1000 percentage points (5.150%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the new Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 11.900% or less than 8.900%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE AND 000/1000 percentage point(s) (1.000%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.900%. My interest rate will never be less than 8.900%.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question i may have regarding the notice.

**5. BORROWER'S RIGHT TO REPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the

Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

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MULTISTATE ADJUSTABLE	Form 3520 1/01
RATE NOTE-LIBOR SIX-MONTH	<i>DocMagiceForms</i> 800-649-1382
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## 6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be traced as a partial Prepayment.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a large charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately run full as described above, the Note



Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### **8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

#### **9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signed this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, suety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note.



make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 with which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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WITNESS THE HAND(S) AND SEAL(S) OF THE  
UNDERSIGNED.

/s/ \_\_\_\_\_ (Seal) /s/ \_\_\_\_\_ (Seal)

MELISSA L. BARNETTE -Borrower JOHN REOSTI -

Borrower

*Atty. in fact*

\_\_\_\_\_  
(Seal)

-Borrower

-Borrower

\_\_\_\_\_  
(Seal)

-Borrower

-Borrower

\_\_\_\_\_  
(Seal)

-Borrower

-Borrower

\_\_\_\_\_  
(Seal)

Pay to the order of:

WELLS FARGO BANK, N.A., SUCCESSOR BY  
MERGER TO WACHOVIA BANK, N.A.

WITHOUT RECOURSE

NovaStar Mortgage, Inc.

A Virginia Corporation

/s/ David A. Pazgan

David A. Pazgan, President/CEO

/s/ Greg Metz

Greg Metz, SVP/CFO

MULTISTATE ADJUSTABLE

RATE NOTE-LIBOR SIX-MONTH

INDEX (AS PUBLISHED IN *THE WALL*

*STREET JOURNAL*)-SINGLE FAMILY

Form 3520 1/01

*DocMagiceForms* 800-649-1382

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6742 Lucent Boulevard, Suite 300, Highlands Ranch, CO 80129

To obtain information about your account, contact SLS at:  
1-800-306-6059 or visit our website at [www.sls.net](http://www.sls.net).  
SLS accepts calls from relay services on behalf of hearing  
impaired borrowers.

Mortgage Statement  
Statement Date: 02/18/16

\* 0612765 000049058 95PS1 0911645  
MELISSA L BARNETTE  
JOHN REOSTI  
1110 Q ST NW  
WASHINGTON DC 20009-4313



Property Address:  
1110 Q ST NW  
WASHINGTON DC 20009

Account Number 1011378764  
Payment Due Date 03/01/16  
**Total Amount Due \*** **\$60,690.04**  
If payment is received after 03/18/16, \$120.00 late fee will be charged.

Account Information	
Outstanding Principal	\$284,970.50
Escrow Balance	\$0.00
Partial Payment (Suspense)*	\$5,515.83
Deferred Principal:	\$0.00
Deferred Interest:	\$0.00
Other Deferred Amounts:	\$0.00
Interest Rate (Unit 07/01/2016)	8.900%
Prepayment Penalty	No

Explanation of Amount Due	
Principal	\$362.27
Interest	\$2,057.53
Escrow (for Taxes and Insurance)	\$256.55
Optional Product	\$0.00
Regular Monthly Payment	\$2,678.35
Total New Fees Charged	\$22.70
Past Due Amounts	\$83,608.82
Partial Payment (Suspense)*	\$5,515.83
<b>TOTAL AMOUNT DUE *</b>	<b>\$60,690.04</b>

\*Transaction Activity (01/05/16 to 02/18/16)

Date	Description	Total	Interest	Principal	Escrow (for Taxes and Insurance)	Optional Product	Fees/Charges	Partial Payment (Suspense)*
01/14/16	FEES BILLED PROP INSPECTION FEE	11.35	0.00	0.00	0.00	0.00	11.35	0.00
02/12/16	FEES BILLED PROP INSPECTION FEE	11.35	0.00	0.00	0.00	0.00	11.35	0.00

Past Payments Breakdown

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (Taxes and Insurance)	\$0.00	\$0.00
Fees/Charges/Optional Product	\$0.00	\$0.00
Partial Payment (Suspense)*	\$0.00	\$5,515.83
<b>Total</b>	<b>\$0.00</b>	<b>\$5,515.83</b>

Important Messages

You are currently due for the 06/01/14 payment.

\* Partial Payments: Any partial payments that you make are not applied to your mortgage, but instead are held in a suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage. However, if the loan is in foreclosure, unless funds are received pursuant to an agreed upon loss mitigation program, any additional funds received will be returned to you.

\* Amount to bring loan current: Please note, if your account is past due, this amount may not include all fees or other amounts necessary to fully restate your loan. Please contact SLS at 1-800-306-6059 for a full restatement quote.

\*\*Delinquency Notice\*\*

If You Are Experiencing Financial Difficulty: You may contact the U.S. Department of Housing and Urban Development (HUD) for a list of homeownership counselors or counseling organizations in your area, call 1-800-569-4287 or go to <http://www.hud.gov/offices/hsg/sfh/hcp/hys.cfm>

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure - the loss of your home. As of February 18, 2016 you are 658 days delinquent on your mortgage loan. Your loan is in foreclosure, the first notice or first legal filing has been completed on your loan.

Recent Account History

- Past due amount as of 09/01/15: \$43,005.28
- Payment due 11/01/15: Amount Due \$2,547.66
- Payment due 12/01/15: Amount Due \$2,687.83
- Payment due 01/01/16: Amount Due \$2,687.83
- Payment due 02/01/16: Amount Due \$2,678.35
- 03/01/16: Current Payment Due \$2,678.35
- Total Unpaid Fees, Charges, and Uncollected Escrow Amount: \$4,408.74
- Total \$60,690.04 due. You must pay this amount to bring your loan current.\*

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION AND DISCLOSURES.

## APPENDIX G

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
Civil Division

US BANK, NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY  
BUT SOLELY AS TRUSTEE FOR THE  
RMAC TRUST, SERIES 2013-1T

Plaintiff,

v. Case No.: 2015 CA 009580 R(RP)  
Judge Assigned: Judge Jennifer A. Di Toro  
Next Event: Status Hearing  
November 17, 2017 10:30 AM

MELISSA BARNETTE, et al.,

Defendants.

**PLAINTIFF'S ACCOUNTING AND  
DISTRIBUTION OF FUNDS**

COMES NOW, your Trustee, who submits the following accounting of funds in connection with the foreclosure of the subject property under this Court's Decree entered on or about March 20, 2017:

Property: 1110 Q Street NW, Washington, DC 20009

Legal Description: Parts of Lots 10 and 11 in Square

**APPENDIX H-1**

310 in a Subdivision made by Coltman and Adams, Trustees, as per Plat recorded in Liber W.F. at folio 98, described as follows: Beginning for the same at a point on the South line of Que Street, NW, 27 feet East of the Northwest corner of said Lot 10, and running thence South 42 feet; thence West 13.50 feet along the South line of said Lot 11, thence North 42 feet to said South line of Que Street, thence East 13.50 feet to the Place of Beginning. Note: At the date hereof the above described land is designated on the records of the Assessor for the District of Columbia for Assessment and Taxation purposes as Lot 809 in Square 310.

Under Deed of Trust from: Melissa L. Barnette and John Reosti Dated: June 25, 2007; Recorded as Instrument # 2007089308

Requirements for publication: Once a week for four (4) consecutive weeks

Publication Dates: 2017, May 17, May 24, May 31, June 7

Sale date and place: June 15, 2017 at 12:17 PM; 5301 Wisconsin Ave, NW #750 Washington, D.C. 20015

Page 1

**High Bidder: Ali Pahlavani Trust with a high bid of \$430,000.00.**

**H-2**



Itemizations and supporting documentation for all amounts set forth below are attached hereto and made a part hereof.

### FINAL ACCOUNTING

	<u>DEBITS</u>	<u>CREDITS</u>
Principal	\$ 284,970.50	
Interest @ 8.9000% from 04/01/2014 to 06/15/2017	\$ 81,286.94	
Negotiated Interest Post-Sale	\$ 1,002.82	
DC Real Property Tax Advances 03/10/2015— 03/16/2017	\$ 5,480.61	
DC Real Property Tax 04/01/2017 to 06/15/2017	\$ 615.21	
DC Real Property Tax past due 2016 and first half 2017	\$ 2,379.38	
DC Water and Sewer Balance	\$ 541.99	
Hazard Insurance 12/16/2015—04/05/2017	\$ 3,609.00	
Escrow Advances	\$ 670.26	
Corporate Advances	\$ 1,094.95	
Late Fees	\$ 4,245.95	
Property Inspections	\$ 192.95	
Property Preservation from 04/23/2015 to 08/15/2017	\$ 1,586.40	
Suspense Balance		(\$ 5,515.83)

Auctioneer Cost	\$ 400.00
Advertising	
Washington Times	<u>\$ 1,232.00</u>
<b>Total</b>	<b>\$ 1,632.00</b>

Prior Firm Bankruptcy	
Fees and Costs	\$ 325.00
Prior Firm Foreclosure	
Fees and Costs	\$ 1,013.92
Stern & Eisenberg	
Firm Costs	\$ 3,152.30
Stern & Eisenberg	
Firm Fees	\$ 3,685.00

Page 2

Amount Due to Plaintiff	\$ 391,969.35
-------------------------	---------------

Trustee's Commission per	
Paragraph 22 of Deed of	
Trust 5% of gross	
sales price	\$ 21,500.00

Alex Cooper's Auctioneers,	
Inc. Commission	\$ 10,350.00

Surplus Funds to Defendants Melissa L. Barnette and John Reosti		\$ 6,180.65
Sale Price		(\$ 430,000.00)
TOTAL DEBITS	\$ 430,000.00	
TOTAL CREDITS		(\$ 430,000.00)
Total	\$ 430,000.00	(\$ 430,000.00)

WHEREFORE, having fully accounted for all sums received, paid or transferred herein, your Trustees move this Court to accept the Accounting, release their bonds, and discharge the Trustees.

/s/ JAQUELINE F. MCNALLY  
 [ ] Steven K. Eisenberg, Court Appointed Trustee  
 [X] Jacqueline F. McNally, Court Appointed Trustee  
 9411 Philadelphia Road, Suite M.  
 Baltimore MD 21237 Tel (410) 635-5127

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Filed  
D.C. Superior Court  
04/20/2017 14:42PM  
Clerk of the Court

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
Civil Division

US BANK, NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY  
BUT SOLELY AS TRUSTEE FOR THE  
RMAC TRUST, SERIES 2013-1T

Plaintiff,

v. Case No. 2015 CA 009580 R(RP)  
Judge Jennifer A. Di Toro

MELISSA BARNETTE, et al.,

Defendants.

**ORDER GRANTING MOTION FOR JUDGMENT  
AND DECREE OF SALE**

This matter is before the Court on Plaintiff's *Motion for Judgment and Decree of Sale*, filed on March 20, 2017. Upon consideration of the motion, the entire record herein, and for good cause shown, the motion is granted.

APPENDIX I-1

## Factual and Procedural Background

Melissa Barnette and John Reosti (“Defendants”) are the record owners of the real property located at 1110 Q Street NW, Washington, D.C. 20009, by virtue of a title deed recorded with the Recorder of Deeds. Statement of Material Facts (“SMF”) ¶ 1. On June 25, 2007, Defendants obtained a mortgage loan in the amount of \$300,000.00 and executed both a promissory note evidencing the terms of the Loan and a deed of trust encumbering the Property. *Id.* ¶ 3. The Deed of Trust was recorded with the Recorder of Deeds on July 6, 2007. *Id.* ¶ 4. The original Lender assigned its rights under the Note and Deed of Trust to Plaintiff and Plaintiff is the current holder of the note. *Id.* ¶ 5; Compl. ¶ 8.

On May 1, 2014, Defendants defaulted on the Note by failing to make the required payments due under the Note. Compl. ¶ 9. Thereafter, pursuant to the Deed of Trust, Plaintiff mailed a demand letter stating the total amount needed to cure the default. *Id.*, Ex. E. Defendants failed to cure the default and pursuant to the Deed of Trust, the loan was accelerated. *Id.* ¶ 11.

Plaintiff filed the Complaint for judicial foreclosure on December 21, 2015. Plaintiff now requests that this Court enter judgment by default against Defendant Reosti and judgment against Defendant Barnette as a matter of law. On April 3, 2017, Defendant Barnette filed a praecipe stating that she did not receive the instant motion until March 27,

2017, and indicating that she would file an opposition by April 13, 2017. No opposition was filed.

## **Discussion**

### **I. Defendant John Reosti**

Plaintiff seeks an entry of judgment by default against Defendant Reosti pursuant to Rule 55(b)(2). Plaintiff filed the Complaint on December 22, 2015. Defendants initially retained Paul Hunt, Esq. to represent them; on February 5, 2016, Mr. Hunt filed a Motion to Withdraw which the Court granted at the August 12, 2016 Initial Scheduling Conference. Defendant Barnette accepted service at the August 12, 2016 hearing.

On September 1, 2016, Defendant Reosti was personally served. Defendant Reosti did not file an Answer or responsive pleading and on October 21, 2016, the Court entered an order of default against Defendant Reosti. Plaintiff now moves for judgment by default pursuant to Super. Ct. Civ. R. 55(b)(2). To date, Defendant Reosti has failed to file an Answer or appear before the Court at any proceedings in this matter. The Court concludes that Defendant Reosti was personally served with the Complaint and properly served with the instant motion and did not respond. Plaintiff filed a Servicemembers Affidavit on April 11, 2017, which demonstrates that Defendant Reosti is not on active duty military duty. The Court concludes that Plaintiff

has satisfied the requirements to obtain judgment by default in this case, and is entitled to a judgment against Defendant Reosti.

## **II. Defendant Melissa Barnette**

Plaintiff seeks an entry of judgment in its favor as a matter of law against Defendant Barnette. Under Rule 56(c), summary judgment shall be granted if the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995); *Smith v. Washington Metropolitan Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). “A genuine issue of material fact exists if the record contains ‘some significant probative evidence... so that a reasonable fact-finder would return a verdict for the non-moving party.’” *Brown v. 1301 K Street Limited Partnership*, 31 A.3d 902, 908 (D.C. 2011 (citing *1836 Street Tenants Ass’n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009) (footnote omitted)). To determine which facts are “material,” a court must look to the substantive law on which each claim rests. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The moving party has the burden to establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Osborne*, 667 A.2d at 1324. If the moving party carries this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *Bruno*

*v. Western Union Financial Services, Inc.*, 973 A.2d 713, 716 (D.C. 2009) (quotations and citations omitted); Osbourne, 667 A.2d at 1324. The non-moving party may not carry this burden merely with conclusory allegations, Green, 164 F.3d at 675; rather he or she “must produce at least enough evidence to make out a prima facie case in support of his [or her] position.” Bruno, 973 A.2d at 717.

Plaintiff seeks to enforce the Note and Deed under D.C. Code § 42-816, which authorizes judicial foreclosure and sale of real property as an equitable remedy for a debtor’s breach of an obligations under a Note secured by a Deed of Trust. The central issue in a judicial foreclosure proceeding is whether the party is in default. *Johnson v. Fairfax Vill. Condo Unit. IV Owners Ass’n*, 641 A.2d 495, 506 (D.C. 1994). As Defendant Barnette failed to file a statement of disputed material facts, the Court may assume that the facts as claimed by the Plaintiff are admitted to exist without controversy. Super. Ct. Civ. R. 12-I(k). However, as Defendant Barnette is proceeding *pro se* the Court will address the issues raised in the April 3, 2017 praecipe filed by Defendant Barnette.

Defendant Barnette raises three issues: (1) Plaintiff is mailing filings and other documents to the wrong address for Defendant Roesti; (2) Plaintiff allegedly never intended to disclose the February 10, 2017 *Motion to Substitute Party Plaintiff* to Defendants; and (3) Plaintiff abused the discovery process by providing boilerplate objections to Defendant Barnette’s Requests for Admissions and Interrogatories. Defendant Barnette’s allegations that filings were sent to the wrong address for Defendant



Roesti are inapplicable to the *Motion for Summary Judgment* against her. Regarding the *Motion to Substitute Party Plaintiff*, Defendant Barnette argues that it was mailed to the wrong address for Defendant Roesti and that she did not receive a copy until February 22, 2017. Even if Defendant Barnette did not receive a copy, until February 22, 2017, the time to file an opposition or request an extension to respond to the motion did not expire until February 27, 2017. Plaintiff did not file an opposition nor request an extension to respond to the motion and she does not now argue any reason that the motion should not have been granted. The Court granted Plaintiff's *Motion to Substitute Party Plaintiff* on March 21, 2017, after Plaintiff established that the Note had been assigned to another party in interest. These arguments do not raise a genuine dispute of material fact.

Finally, Defendant Barnette argues that the Motion for Summary Judgment should not be granted because Plaintiff's objections to the requests for discovery and interrogatories are improper. The interrogatories that Defendant Barnette contends were improperly objected to do not bear on the central issue in this case—whether or not Defendants are in default, which Defendant Barnette does not dispute. Consideration paid for the assignment of the Note is irrelevant to Plaintiff's right to foreclose under the Note. Plaintiff's submissions establish that it is the holder of the Note and is entitled to judicial foreclosure pursuant to § 42-816 of the D.C. Code. Defendant

Barnette fails to raise any genuine dispute of material fact and the Court concludes that Plaintiff is entitled to judgment as a matter of law based on the undisputed facts. The *Motion for Summary Judgment* shall be granted.

Accordingly, it is this 20<sup>th</sup> day of April, 2017, hereby,

**ORDERED**, that Plaintiff's *Motion for Judgment and Decree of Sale* is **GRANTED**. It is further

**ORDERED**, that Judgment is entered in favor of Plaintiff as prayed for in its Verified Complaint and against Defendants Melissa Barnette and John Roesti. It is further

**ORDERED**, that the District of Columbia Recorder of Deeds shall record a copy of this Order in the land records for 1110 Q Street NW, Washington, D.C. 20009, as more specifically described in the Complaint and attached exhibits, shall be conducted on the following terms and conditions:

#### **DECREE OF SALE**

To the extent Steven K. Eisenberg, Jacqueline F. McNally, and George E. Wise have been named as Substitute Trustees as to the Property known as 1110 Q Street NW, Washington, DC 22209, and more specifically described in the Complaint and attached Exhibits prior hereto, the same is ratified and confirmed, or, in the alternative, Steven K. Eisenberg,

Jacqueline F. McNally, and George E. Wise are appointed as Substitute Trustees for purposes of foreclosure. Upon posting a bond in the amount of \$25,000.00 into the Court, either of them, acting alone or in concert, may proceed to foreclose upon the Property known as 1110 Q Street NW, Washington, DC 20009, by public auction in accordance with the Deed of Trust and the following additional terms:

1. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust and the matter of BFP v. Resolution Trust Corp., 511 U.S. 531, 543 (1994), the Trustees shall mail notice of the time, place, and terms of the auction to all junior lienholders, owners of record, and occupants, by certified mail, return receipt requested and by first class mail, no more than 30 days and no less than 10 days, before the auction date.
2. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust, Super. Ct. Civ. R. 308(b)(1), the Trustees shall advertise the time, place and terms of the auction, in a newspaper of general circulation, once a week, for four consecutive weeks leading up to the auction.
3. Pursuant to the contractual provisions in ¶ 22 of the Deed of Trust and Super. Ct. Civ. R.

308(b)(3), the Trustees may employ an auctioneer for the sale process and incur reasonable costs associated therewith.

4. Complying with the contractual provisions in ¶ 22 of the Deed of Trust, the Trustees can appoint an Attorney to appear on behalf of the Trustee to supervise and attend the sale.

5. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust, the Trustees may require a purchase to post a nonrefundable deposit of up to 10% of the price bid in certified funds, may condition the right to bid

or acceptance of bids upon a showing of said deposits, and reserves the right to reject any bid made by anyone who does not have the deposit in hand at the auction.

6. Pursuant to D.C. Code §42-817, the Philadelphia Newspaper cases, and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012), the deposit required to bid at the auction is waived for the Noteholder and any of its successors or assigns.

7. Pursuant to D.C. Code §42-817, the Philadelphia Newspaper cases, and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012), the Noteholder may bid up to the amount owed on the Note plus

all costs and expenses of sale on credit and may submit a written bid to the Trustee which shall be announced at sale.

8. Based upon the customs and practices in the District of Columbia, the Trustees shall be announced at sale.
9. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust and *Perry v. Virginia Mortgage and Investment Co., Inc.*, 412 A.2d 1194, 1197 (D.C. 1980), the Trustees may establish additional terms of sale as may be appropriate in their judgment to promote the best price at the auction so long as the same remain consistent with, and do not alter, the specific terms and conditions of the Deed of Trust and this Decree.
10. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust, Super. Ct. Civ. R. 308(b)(2), and D.C. Code §42-816, the Trustees may enter into a contract of sale with the highest qualified bidder subject to ratification by the Court, and any memorandum of sale must indicate that the sale is subject to said ratification.
11. Complying with Super. Ct. Civ. R. 308(b)(2), if a Third Party is successful at the auction the bond shall be increased to the full amount of the purchase price, which shall be posted prior to ratification by this Court.

12. Pursuant to Super. Ct. Civ. R. 308(b)(4), the Trustees shall file a Verified Report of Sale with Court within thirty (30) days of the auction. The Verified Report of Sale will specify the time, place, terms of the sale, the Purchaser, the purchase amount, and deposit held along with an affidavit and documentation indicating that the Trustees complied with the notice and advertisement requirements set forth above.
13. In accordance with the contractual provisions in ¶ 22 of the Deed of Trust, and unless otherwise ordered at the time of ratification, settlement shall occur by payment of all sums due under the bid in certified funds to the trustees within sixty (60) days from the entry of an Order ratifying the Sale. If the purchaser fails or refuses to settle within the allotted time frame, the deposit will be forfeited and the Trustees may apply the deposit toward costs, fees or their compensation associated with the initial auction and the resale process. Any remaining amount shall be credited to the underlying debt.
14. Pursuant to the contractual provisions in ¶ 22 of the Deed of Trust, after the purchaser's funds submitted to the Trustees have cleared,

the Trustees shall execute and deliver a Trustees' Deed, transferring title to the purchaser. The costs of recording the Deed aforesaid shall be upon the purchaser.

15. In compliance with the contractual provisions in ¶ 22 of the Deed of Trust and Super. Ct. Civ. R. 308(b)(d), within sixty (60) days of settlement, the Trustees shall file evidence of the settlement including a copy of the Trustee's Deed, a proposed accounting and distribution of funds, and a proposed order ratifying the distribution. A Copy of the aforesaid shall be sent to the borrower and all junior lien holders and must inform them that claims or disputes must be filed within fourteen (14) days or the distribution may be ratified without further hearing.
16. According to ¶ 23 of the Deed of Trust, any unclaimed funds due to the junior lienholders, owner, or any other party, may be identified for payment into the Court registry, and, upon payment thereof the Trustees may request a determination that their duties have been discharged and the case be closed with the bond released.
17. In compliance with ¶ 22 of the Deed of Trust, the Trustees shall be entitled to recover their

costs incurred, including reasonable attorney's fees and commissions as authorized by the Deed of Trust for the execution of duties performed in accordance with the foreclosure and this Decree as part of the settlement. It is further

**ORDERED** that a status hearing will be held on July 7, 2017, at 10:00 a.m. in Courtroom 518, in anticipation that by that time, a motion to ratify the terms of the sale will have been filed. That status hearing may be continued, at the parties' request, should a motion to ratify the terms of the sale not be ripe as of that date.

**SO ORDERED.**

/s/ Jennifer A. Di Toro  
Judge Jennifer A. Di Toro  
Associate Judge  
*Signed in Chambers*

Copies to:

Via First Class Mail:  
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**Rule 5.2. Privacy Protection for Filings Made with the Court**

(a) REDACTED FILINGS. Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of an individual known to be a minor; and a financial-account number, 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.

(b) [Omitted].

(c) [Omitted].

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

**APPENDIX J**