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No. 22- 359

In The
Supreme Court of the United States

RODA GIDEY,

Petitioner,

v.

SETTLEMENT CORP AND 5401 8TH ST.,

Respondents.

**On Petition For Writ Of Certiorari To The
District Of Columbia Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTION PRESENTED

Most of the Defendants in interpleader cases in real estate transactions in the District of Columbia are African Americans even though they are only half of the population. Although, interpleader has many benefits, the result has been a failure of due process and equal protection in the District of Columbia. Unlike other surrounding states, in the District of Columbia, interpleader cases with counterclaims, crossclaims and genuine issues are decided by summary judgment, and the Sellers have been forced to accept the settlement terms of the Purchaser and/or the escrow agent or risk summary judgment. The nonconformist position of the D.C. Courts has, thus, created, conflict and confusion in the courts of the entire Eastern Region.

The Question Presented is whether the decision of the D.C. Court of Appeals should be reversed and the case remanded because the due process and equal protection rights of Petitioner were violated.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

At all times relevant to this action, Petitioner, Roda Gidey, was the Appellant before the District of Columbia Court of Appeals and the Defendant in the trial court, the District of Columbia Superior Court. Petitioner is a resident of the District of Columbia. Petitioner and her estranged spouse, Mr. Yeh ego were the record owners of the property located at the 5401 8th Street, North West, in the District of Columbia, 20012 sold on February 21, 2018 to 5401 8th St. pursuant to the subject Sale and Purchase Agreement.

At all times relevant to this action, Respondent Settlement Corp according to the Complaint, was the Plaintiff in the subject Interpleader action against the Defendants 5401 8th St., Roda Gidey and Yeekkallo Yehdego. Respondent 5401 8th St. was the Defendant/Cross-claim-Plaintiff against the Cross-claim filed in this interpleader action against the Sellers, Roda Gidey and Yeekkallo Yehdego. Petitioner Roda Gidey was the Defendant/Counterclaims-Plaintiff in this interpleader action filed against the Respondent Settlement Corp which was the Plaintiff/Counterclaims-Defendant according to the Counterclaims.

RELATED CASES

- *Roda Gidey v. Yeekkallo Yehdego and Bank of America, Case No. 2018 CA 005066 B.* Judgment entered on April 17, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Roda Gidey respectfully submits this petition for a writ of certiorari.

OPINIONS BELOW

The Decision of the District of Columbia Court of Appeals, the court of last resort for the District of Columbia, is reproduced below at App. 1. The Summary Judgments of the District of Columbia Superior Court are reproduced below at App. 28 and 65. Not all decision are printed, except those deemed by the Chief Judge of the D.C. Superior Court to be worthy of general publication. These decisions are currently unreported.

JURISDICTION

On April 20, 2020, the D.C. Superior Court granted Settlement Corp's Rule 56(c) motion for summary judgment to file the interpleader under Rule 22(a)(1), and the Purchaser's motion for summary judgment on its claim for breach of contract and damages in the amount of \$88,000.00. On the same day, the D.C. Superior Court also granted Settlement Corp's motion for summary judgment dismissing Gidey's counterclaims for interest on the fund, for breach of contract and breach of fiduciary duties. On May 18, 2020, the D.C. Superior Court entered judgment against Gidey and Yehdego and in favor of Settlement Corp, and 5401 8th

St. for their attorneys' fees and costs in the combined total amount of \$204,000.000. These Summary Judgments were limited paragraphs.

Settlement Corp alleged, and Defendant Gidey has not demonstrated a genuine disputed fact that (a) a dispute between Gidey and the Purchaser over the latter's claim for damages from the same fund existed, and that (b) Settlement Corp faced double or multiple liability due to this conflicting claim to the same fund by the Purchaser and Gidey.

The Purchaser alleged, and Defendant Gidey has not demonstrated a genuine disputed fact that (a) the sellers failed to provide clear title to the property on the date of settlement, and that (b) the Purchaser is entitled under the SPA to damages as a result of the sellers' failure to provide clear title to the property on the settlement date.

Settlement Corp alleged, and Gidey has not demonstrated a genuine factual dispute that her claim for interest on the fund did not have any legal basis.

Settlement Corp alleged, and Gidey has not demonstrated a genuine factual dispute that (a) her communications beginning on June 3, 2018 asking Settlement Corp not to file the interpleader waived any right she may have, that (b) the exculpatory clause in the escrow agreement protected Settlement Corp from simple mistake or negligence in failing to comply with the terms of the escrow agreement on the deadline for the filing of the interpleader, and that (c) Gidey has not provided evidence showing that the conduct of

Settlement Corp for failing to timely file the interpleader amounted to willful misconduct or gross negligence.

Settlement Corp alleged, and Gidey did not demonstrate a genuine disputed fact that the escrow agreement entitled Settlement Corp to attorneys' fees and costs in the amount of \$104,000.00 for defending against Gidey's opposition and counterclaims.

The purchaser alleged, and Gidey did not demonstrate a genuine disputed fact that the SPA entitled the Purchaser to attorneys' fees and costs in the amount of \$100,000.00

The D.C. Court of Appeals entered its Decision on May 2020. This Court has jurisdiction under 28 U.S.C. § 1257(b).

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

- **U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws.

- **D.C. Code § 2-1402.11(a)**

It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual

- **D.C. Code § 2-1402.68**

[a]ny practice which has the effect or consequence of violating any of the provisions of this chapter shall be deemed to be an unlawful discriminatory practice.

STATEMENT OF THE CASE

A. Constitutional Implications

The first Respondent Settlement Corp delayed the filing of the interpleader by more than a year and is still using the escrowed fund to the present day. Obviously, Settlement Corp was not acting as a mere stakeholder. Moreover, Petitioner filed Counterclaims against Settlement Corp opposing the interpleader and asserting claims for interest on the fund, breach of contract and breach of fiduciary duties. Petitioner also raised multiple complicated matters in opposition to the

interpleader, and in opposition to the second Respondent 5401 8th St's (the "Purchaser") Cross-Claim for Breach of contract. Thus the instant case is not simple and straight forward as a simple interpleader action, as it involved several counterclaims and crossclaims which cannot be disposed of summarily. Moreover, Respondent Settlement Corp did not have a right to relief from liability by filing an interpleader because of the inordinate delay. Furthermore, there was no showing by the movants of exigent circumstances, no emergency which mandated summary judgments, *United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006) ("Summary disposition is appropriate in an emergency, when time is of the essence and the court cannot wait for full briefing and must decide a matter on motion papers alone.") Petitioner raised several complicated matters, matters that should have been resolved by an impartial finder of fact and not the expedited instrument of Summary Judgment. In *Jean Antoine et al. v. U.S. Bank National Association et al.*, (Civil Action No. 07-1518 (RMU), the United States District Court for the District of Columbia, stated in a Memorandum Opinion (dated October 24, 2010) that 'A "genuine dispute" is one whose resolution could establish an element of a claim or defense and, therefore, affect the outcome of the action,' citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) and *Anderson Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1. Summary Judgment in These Interpleader case Involving Escrowed Home Sales Proceeds Violate Established Principles of Due Process and Equal Protection

Every litigant is entitled to fair and equal treatment and no citizen should be deprived of life, liberty or property without due process of law. The Interpleader Action by Escrow Agents in Real Estate Transactions in the judicial process of the District of Columbia has not been conducted in accordance with well established procedures, and defendants in such cases, almost all African American, are treated differently than other litigants in non-interpleader judicial cases. Moreover, these defendants, because of the nature of the Court's proceedings in interpleader cases, are not afforded a right to trial.

2. Equal Protection and Due Process Violations

Petitioner is a member of the African American community who make up half of the population of the District of Columbia, and most litigants interpleaded for alleged dispute over the interpleaded home sales proceeds, are African Americans, even though African Americans make up only half of the population in the District of Columbia. Under the landmark case of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) a *Prima facie* case of discrimination is shown by establishing that 1) A Party is a member of a protected class; 2) she suffered an adverse action; and

3) similarly situated litigants, outside of the protected class, received more favorable treatment. As indicated above, Petitioner is a member of the protected class by reason of her identity as an African American. Also, Petitioner has suffered an adverse action, by reason of the fact that her share of the interpleaded sales proceeds had been nearly wiped out, or depleted, to pay unprecedented excessive attorney's fees and costs to the escrow agent and the Purchaser in a case that was summarily disposed of without trial. With respect to the 3rd factor, Petitioner has asserted that similarly situated litigants outside the interpleader judicial proceedings received more favorable treatment. "When a black man demonstrated that he possess the qualifications to fill a job opening and that he was denied a job which continues to remain open, we think he presents a *prima facie* case of racial discrimination." *Id.* at 344. "The purpose of America's laws is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of gender or other impermissible classification," 411 U.S. 792, 800-801 (1973). *McDonnell Douglas* proclaims that assuring neutrality in decisions is the primary goal.

Consistent with this, the U.S. Supreme Court in *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981) has held that establishing such disparate treatment doesn't require an onerous burden of proof. A plaintiff, thus, can establish a *prima facie* case by "offering evidence adequate to create an inference that an employment decision was based on a

discriminatory criteria illegal under [law]," *Mitchell v. Office of the Los Angeles County Superintendent of Schools*, 805 F.2d 844, 846 (9th Cir. 1986) (quoting *Teamsters v. United States*, 431 U.S. 324, 358 (1977)); and see *Lowe v. City of Monrovia*, 775 F.2d 998, 1006 (9th Cir. 1985) (complainant can establish a *prima facie* case of disparate treatment without satisfying the *McDonnell Douglas* test if he or she provides evidence suggesting rejection was based on discriminatory criteria), amended, 784 F.2d 1407 (1986). A plaintiff who provides such evidence for his or her *prima facie* case may be able to survive summary judgment on this evidence alone, *Lowe*, 775 F.2d at 1008.

The DC Human Rights Act holds at D.C. Code §2-1402.11(a) that "It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual. Under this Act, upon proof of disparate impact by Petitioner, the Respondent has the burden of proof showing that their alleged justification is a genuine legal justification that they relied on and that motivated them. Unlike equal protection, under the D.C. Human Rights Act, Petitioner doesn't have to prove intent. D.C. Code §2-1402.68, contains what is known as an effects clause of the DCHRA which the District of Columbia Court of Appeals has interpreted to provide that

“despite the absence of any intention to discriminate, practices are unlawful if they bear disproportionately on a protected class and are not independently justified for some nondiscriminatory reason,” *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 29 (D.C. 1987); see also *Ramirez v. District of Columbia*, No. 99-803(TFH), 2000 WL 517758 (D.D.C. 2000) (holding that “the effects clause of the DCHRA prohibits unintentional discrimination as well as intentional”), *Mitchell v. DCX, Inc.*, 274 F.Supp.2d 33, 47 (D.D.C. 2003). The District Court of Appeals has also held that this effects clause brings into the act “the concept of disparate impact discrimination developed by the Supreme Court in *Griggs v. Duke Power Co.*,” *Gay Rights Coal. v. Georgetown Univ.*, 536 A.2d 1, 29 (D.C. 1987). “. . . [t]he Second Circuit developed a burden-shifting framework: once the plaintiff demonstrates that the challenged practice has a disproportionate impact, the burden shifts to the defendant to “prove that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect,” *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935-36 (2d Cir. 1988), aff’d on other grounds, 488 U.S. 15, 18, 109 S.Ct. 276, 102 L.Ed.2d 180 (1988). Several circuits have adopted this burden-shifting framework. See, e.g., *Darst Webbe Tenant Association Board v. St. Louis Housing Authority*, 417 F.3d 898, 901-02 (8th Cir. 2005); *Langlois v. Abington Housing Authority*, 207 F.3d 43, 51 (1st Cir. 2000).

The United States Supreme Court has held that a plaintiff must allege a "plausible entitlement to relief" by stating "a set of facts consistent with the allegations," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1956 (2007). These set of facts, consistent with the factual allegations entitling plaintiff to plausible relief, must state a claim for relief that is plausible on its face. *Ashcroft b. Iqbal*, 129 S.Ct. 1937 (2009). See also, *Carter-Obayuwans v. Howard University*, 764 A.2d 779-779, 787 (D.C. 2001). Facial-plausibility is determined by whether the Plaintiff has pleaded enough facts to allow the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged. *Id.* In analyzing a summary dismissal motion, the court must assume the facts alleged in the complaint as true, and construe the complaint in a light most favorable to the plaintiff. *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009) citing *Papasan v. Allain*, 478 US. 265, 286 (1986). Further, because of the preference for the resolution of disputes on the merits, pleadings are construed so as to do substantial justice, and cases should not be dismissed on technicalities of pleading. *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008), quoting *Obayuwans v. Howard University*, 764 A.2d 779 (D.C. 2001). Dismissal is proper only where the Plaintiff can prove no plausible facts that would support the claim. *Cauman v. George Wash. Univ.*, 630 A.2d 1104, 1105 (D.C. 1993). Here, Petitioner's claims are likely not just only plausible and possible.

The U.S. Supreme Court held that the existence of a racially disparate "impact of the official action . . .

whether it bears more heavily on one race than another . . . may provide an important starting point" for analysis of constitutional purpose. This is because "Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face," *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) (citing) *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Guinn v. United States*, 238 U.S. 347 (1915); *Lane v. Wilson*, 307 U.S. 268 (1939); and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)). The Court in *Arlington Heights* went further to state that, when such a "clear pattern" of racial disparity, "unexplainable on grounds other than race," emerges, the appearance of such a pattern makes concluding the "evidentiary inquiry" of discriminatory purpose "relatively easy." As the Supreme Court clearly indicated, a pattern of racially disparate impact alone can be determinative of the purpose inquiry where there is "a pattern as stark as that in *Gomillion* or *Yick Wo*," *Id.* It is hard to imagine a more discriminatory policy with the kind of consequences the Interpleader Court in the District of Columbia has had on African Americans. This racialized effect is comparable to the policy invalidated in *Gomillion v. Lightfoot*, where the Alabama legislature had changed the political boundaries of the City of Tuskegee in such a way as to remove from the city several hundred African-American voters "while not removing a single white voter or resident," 364 U.S. 339, 341 (1960). Similarly, in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Court found a violation where a facially neutral ordinance, which forbade operation of

a laundry in a wooden structure without the special permission of the city's Board of Supervisors, was applied in an unequal way disfavoring Chinese laundry owners. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Court invoked *Arlington Heights* and *Gomillion* to find that, even without any evidence of an independent discriminatory public purpose, "a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to 'segregate . . . voters' on the basis of race," *Id.* at 646-47. The critical insight of the *Shaw* Court appeared in its statement that reapportionment "is one area in which appearances do matter," *Id.* at 647. When government classes people together "who belong to the same race . . . and who may have little in common with one another but the color of their skin," and then treats them differently from others, the public regime comes to bear "an *Id.*"

3. Summary Judgment Was Inappropriate

Because the basic facts are both complicated and in dispute, this case was not appropriate for Summary Judgment. *Carl v. Tirado*, 945 A.2d 1208 (D.C. 2008). In addition, the trial courts Summary Judgment disposition of this case did not rest "on a narrow and clear-cut issues of law". *Id.* at 1209. See also *Oliver T. Carr Management., Inc. v. National Delicatessen, Inc.*, 397 A.2d 914 (D.C. 1979). The *Carr* and *Tirado* tests were recently affirmed in *Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013). The Trial Judge's April 20, 2020 and May 18, 2020 Orders granting Summary Judgment,

demonstrate that this matter does not rest “on a narrow and clear-cut issue of law.” Indeed that Order does not even address the manifold issues raised by Appellant in her Opposition to the Respondent’s Motions for Summary Judgment, in other pleadings filed by Appellant at the Trial level, in matters raised before the D.C. Court of Appeals and in the instant Petition. If there is any doubt that the legal issues are not narrow, the Trial Judge’s shallow Orders leaves no doubt.

Summary disposition is only proper “when the position of one party is so clearly correct as a matter of law that no substantial question regarding these outcomes of the appeal exists,” *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). *See also Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158 (5th Cir. 1969).

B. Relevant Factual Background And Procedural history

In support of their motion for Summary Judgment, Respondents, Settlement Corp and the Purchaser, relied almost exclusively on unproven factual claims in their motions. The important and undisputed facts however, largely ignored by the Trial Court are these: On July 2019, after a delay of over a year, Respondent Settlement Corp filed the instant Interpleader Complaint naming Petitioner Gidey, her spouse Yehdego, and the Purchaser 5401 8th St. as Defendants. Settlement Corp filed the Interpleader Complaint claiming that the dispute between the Petitioner and the Purchaser on whether the Purchaser is entitled to

a portion of the escrowed funds for damages for the delay in providing clear title exposed it to double or multiple liability.

Gidey and Yehdego had purchased the marital home in 1993 holding it as tenants by the entireties. In 1996, Yehdego had filed for divorce and obtained a default judgment awarding Yehdego sole title to the property. In 2008, Yehdego used the property as security to obtain a loan of \$180,000.000 through a Home Equity Line of Credit ("HELOC") from Bank of America ("the Bank"). In 2014, the undersigned filed a motion for relief from the Default Judgment on behalf of Gidey, and also a separate complaint for declaratory judgment against Yehdego, requesting that the court find that the Property was joint marital property and enjoining Yehdego from encumbering, selling, or transferring it unilaterally. After consolidating the two cases, in 2016, the court granted relief to Gidey by vacating the divorce, entering a declaratory judgment that the Property was joint marital property, and prohibiting Yehdego from encumbering, selling, or transferring it unilaterally. As the Court in the July 17, 2019 Order found as stated below, this 2016 Order raised a question about the validity of the Bank's lien on the property. In February 2018, the Petitioner, Gidey, and her spouse, Yehdego, then, signed a Standard Sale and Purchase Agreement ("SPA"), to sell their marital residence to 5401 8th Street, the Purchaser. The Petitioner Gidey was not represented by counsel at the time she signed the SPA, which provided that the property will be conveyed free of all liens, including the lien

imposed for the Bank of America loan, even though the 2016 Order raised a question about its validity. Yehdego refused to pay off the HELOC loan, and threatened Gidey that she will not get a penny from the proceeds of the sale unless she shares in the payment of the HELOC. Yehdego also refused to give her a copy of the SPA, and she was unable to get it from the Purchaser or Settlement Corp. As a result, Gidey retained undersigned to represent her in the matter. After obtaining a copy, undersigned showed Gidey the hand written note on the last page of the SPA purportedly signed by Gidey, which stated that Gidey and Yehdego agreed to pay off equally the HELOC from their share of the sales proceeds. Gidey denied that she had signed that handwritten note on the SPA. Yehdego continued refusing to pay off the HELOC from his share of the proceeds, and as a result the settlement date set in the SPA was continued to May 1, 2018. On May 1, 2018, the Purchaser received the title to the property, and the parties signed the settlement statement closing the purchase of the property. The parties also signed an escrow agreement to place the sales proceeds in Settlement Corp's escrow account, until either Gidey and Yehdego reach a written agreement as to the division of the sales proceeds within 30 days, or until such time as the court determines upon the filing of an interpleader action how the sales proceeds are to be divided. Neither the escrow agreement nor the Settlement Statement provide for the payment of any portion of the escrowed fund to the Purchaser. The escrow agreement which contained a "Time is of the essence" provision, provided:

"The parties agree that said escrow shall not be Held for a period exceeding 30 days, at which time Settlement Corp shall proceed to file an interpleader Action in the Superior Court of the District of Columbia Placing the escrowed funds in the Registry of the Court Until such time as the Court determines how the sales Proceeds are to be divided."

Yehdego refused to pay off the HELOC from his portion of the escrowed sales proceeds, within the 30 days deadline, and there was, thus, no written agreement signed by Yehdego and Gidey provided to Settlement Corp as to how the sales proceeds are to be divided. 30 days also passed and Settlement Corp failed to file the interpleader action in the Superior Court on June 1, 2018, for no reason. The delay caused Gidey to incur expenses to file a lawsuit in the Superior Court for declaratory judgment and quiet title claim, as well as for an order to recover the fund against Settlement Corp after the entry of the April 17, 2019 Order. The delay caused Gidey to be concerned that Yehdego, the Purchaser and Settlement Corp had planned to pay off the HELOC from the sales proceeds somehow forcing her to share in its payment. Her fears had some basis in reality, because of the forging of her signature on the hand written note on the SPA regarding the payment of the HELOC, and the consent judgment later on signed by Yehdego and the Purchaser to provide the latter per diem damages for the claimed delay in conveying clean title. See, trial court order entered on the hearing date held on March 11, 2020. The delay in the filing of the interpleader was additional

evidence of the parties ganging up against Petitioner. As a result, to prevent such payment of the HELOC using her share of the sales proceeds from happening, Gidey decided to file a lawsuit in the Superior Court to resolve the issues of the payment of the HELOC and as to how the sales proceed are to be divided. Accordingly, on June 3, 2018, Gidey communicated her decision to Settlement Corp and asked it not to release any of the escrowed funds before a court determines as to how the sales proceeds are to be divided to pay off the HELOC.

Accordingly, on July 17, 2018, Gidey commenced a quiet title action against Bank of America, and a declaratory judgment against Yehdego, and Settlement Corp after the entry of the April 17, 2019 order to compel it to disburse the escrowed funds to the sellers. On April 17, 2019, the Court in the declaratory judgment case ruled in favor of Gidey ordering that, **prior to payment** of the HELOC, the net sales proceeds should be divided equally between Gidey and Yehdego, and only then should the HELOC loan in its entirety be paid off from Yehdego's share of the sales proceeds.

"Thus, there is no bases to require Plaintiff to help repay Yehdego's debt. The proceeds of the sale of the property therefore must be equally divided between Plaintiff and Defendant Yehdego **prior to repayment of the HELOC** (Emphasis added)"

See, Case No. 2018 CA 50668 April 17, 2019 Order page 5, paragraph 2.

It was Settlement Corp's failure that caused Gidey to file the lawsuit seeking such a determination. This Order and this specific finding exonerated Gidey's communications with Settlement Corp following its failure to file the interpleader asking it not to disburse the fund or pay off the HELOC prior to a court determination of who was responsible for the payment of the HELOC as between Gidey and Yehdego. This Order, thus, is the law of the case on the issue of whether the apportionment of responsibility to pay the HELOC as between Gidey and Yehdego should be made before the payment of the HELOC. Notwithstanding this fact and this law of the case, the trial court and the D.C. Court of Appeals turned a blind eye to it. Completely ignoring it, they declared that the apportionment of the responsibility as between Gidey and Yehdego should have been made later after the payment of the HELOC, and found Gidey entirely responsible for the delay. It is on this erroneous finding that the trial court and the D.C. Court of Appeals held that Gidey breached the SPA regarding providing clear title of the property to the Purchaser. "Thus, when Gidey insisted that Settlement Corp refrain from disbursing funds to pay off the HELOC loan . . . this caused a breach of the Seller's obligation under the SPA." See, *D.C. Court of Appeals Memorandum Opinion and Judgment, App. 1, ¶1 p. 12*. The trial court and the D.C. Court of Appeals also held that Gidey waived her right to claim a breach of the escrow agreement by Settlement Corp for its failure to file the interpleader on June 1, 2018 pursuant to the terms of the escrow agreement when she asked Settlement Corp not to disburse the fund prior to the

determination by a court of who should pay the HELOC loan as between Gidey and Yehdego. "Like the trial court, we see nothing in the record that would support a finding that Settlement Corp engaged in willful misconduct or gross negligence by failing to file an interpleader action once 30 days had passed given the undisputed evidence that Gidey . . . repeatedly insisted, in the days following that failure that Settlement Corp not do so." i.e. not disburse the fund prior to a determination of the apportionment of the payment of the HELOC as between Gidey and Yehdego. *Id.* at p. 19, ¶ 1. It is based on this erroneous reasoning that the trial court and the court of appeals blamed Gidey for the delay and found her to be liable for damages to the Purchaser for the delay and found nothing wrong with the filing of the interpleader after a delay of more than a year. The trial court and the court of appeals, let alone giving consideration to this matter, they don't even mention the fact that Settlement Corp's delay was what caused Gidey to file the lawsuit, which was the logical next step that took place to recover the fund. Instead of putting the responsibility for the delay on Settlement Corp, they wrongly blame Gidey for the delay. The explanation provided for this shifting of the responsibility for the delay is Gidey's communications with Settlement Corp against the disbursement of the fund once she was determined to file the lawsuit herself, directly or indirectly, to recover the fund. In so doing, Gidey was forced to recover or protect her purchase money, and thus cannot amount to a waiver as it was not free or voluntary. Moreover, Settlement Corp was not under any obligation to comply with the

unilateral request of Gidey, and it could have filed the interpleader and deposited the fund in the courts without regard to Gidey's request. Note also that Gidey did not request Settlement Corp not to file the interpleader or to deposit the fund in the courts. Her request was only for not disbursing the escrowed funds to pay off the HELOC or to pay the sellers before a court order on the apportionment of the payment of the HELOC. An impartial finder of facts should have been able to weigh these undisputed facts against the backdrop of Respondents' claims. At the center of this matter however is the significant depletion of the interpleaded fund to pay the stakeholder's and Purchaser's attorneys' fees, and costs of \$204,000.000, including \$88,000.000 in damages to the Purchaser, the inordinate delay by Settlement Corp in filing the interpleader, and Settlement Corp's use of the fund, or of what is left of it, to this day without paying any interest. Because of the inordinate delay, (1) lashes apply, and the question of whether Settlement Corp should be considered as a mere stakeholder, and be allowed to file an interpleader when it failed to file it on June 1, 2018 pursuant to the terms of the escrow agreement, and when it delayed the filing by more than a year, should have been settled and resolved (2) the question of whether Settlement Corp's conduct in failing to file the interpleader action pursuant to the escrow agreement, which has a "time is of the essence" provision, and which clearly set a specific date explicitly stating that the fund should not be kept in the escrow account for more than 30 days, was willful misconduct or grossly negligence should have been settled and

resolved, (3) The question of whether the failure of Settlement Corp to file the interpleader and deposit the fund in the courts caused Petitioner to incur expenses in filing the lawsuit filed on July 17, 2018 to recover the fund should be settled and resolved, (4) The question of whether Settlement Corp believed in good faith that the Purchaser's claim for damages based on the SPA is "reasonably debatable" should have been settled and resolved, given that the Purchaser on May 1, 2018 reached settlement accepting the title as it was, and signed an escrow agreement for the distribution of the sales proceed to the sellers, only, upon their written agreement or the determination of a court as to the apportionment of the payment of the HELOC as between Gidey and Yehdego. Had the trial court considered these matters, the undisputed evidence demonstrates that all of these questions must be resolved in favor of Petitioner.



REASONS FOR GRANTING THE PETITION

I. SUMMARY JUDGMENT IS NOT SUPPORTED

The Appeals Court failed to review *de novo* the Summary Judgment of the Trial Court. The D.C. Court of Appeals has established that it "reviews grants or denials for summary judgment *de novo* and applies the same standard as the trial court in reviewing and assessing the record in the light most favorable to the non-moving party." *Borger Mgmt., Inc. v. Sindram*, 886 A.2d 52, 58 (D.C. 2005). *See Tobin v. John Grotta Co.*,

886 A.2d 87 (D.C. 2005) (“We review orders granting summary judgment *de novo*.”); *Parcel One Phase One Assocs., L.L.P. v. Museum Square Tenants Ass’n, Inc.*, 146 A.3d 394 (D.C. 2016) (“Whether summary judgment was properly granted is a question of law that we review *de novo*.”); *William J. Davis, Inc. v. Tuxedo LLC*, 124 A.3d 612 (D.C. 2015) (“The question whether summary judgment was properly granted is one of law and we review *de novo*.”); *Joeckel v. Disabled Am. Veterans*, 793 A.2d 1279 (D.C. 2002) (“In reviewing a trial court order granting summary judgment, we conduct an independent review of the record, and our standard of review is the same as the trial court’s standard in considering the motion for summary judgment.”).

The Court of Appeals has held that the party opposing the motion for summary judgment must provide enough evidence to make a *prima facie* case in support of its position. *Parcel One Phase One Assocs., L.L.P. v. Museum Square Tenants Ass’n, Inc.*, 146 A.3d 394 (D.C. 2016). Furthermore, “mere conclusory allegations by the non-moving party are legally insufficient to avoid the entry of summary judgment.” *Little v. D.C. Water & Sewer Auth.*, 91 A.3d 1020, 1025 (D.C. 2014). Rather, the non-moving party must show that there is a genuine issue of material fact and that the moving party is not entitled to judgment as a matter of law. See *Reeves v. Wash. Metro. Area Transit Auth.*, 135 A.3d 807 (D.C. 2016); *Sibley v. St. Albans Sch.*, 134 A.3d 789 (D.C. 2016).

The D.C. Court of Appeals citing to a Maryland case law held “Ordinarily, unless the facts are so clear

as to permit a conclusion as a matter of law, it is for the trier of fact to determine whether a defendant's negligent conduct amounts to gross negligence. *See, Carleton v. Winter*, 901 A.2d 174 (D.C. 2006) referring to Maryland case law in this regard, *Jacob v. Davis*, 739 A.2d 904; 128 Md. App. 433. The cited Maryland case law held that if a defendant fails to comply with clear instructions of an agreement, the defendant either did not read the instructions, or intentionally deviated from the instructions. In the latter case, at least the trier of fact could find gross negligence, without the necessity of extrinsic evidence. Thus, the determination of whether a defendant's negligent conduct amounts to gross negligence raises a question of fact, and hence a jury question which should not be dismissed by a summary judgment.

The Court of Appeals found that the non-moving party adequately raised a genuine issue of material fact in *Reeves v. Wash. Metro. Area Transit Auth.*, 135 A.3d 807 (D.C. 2016), and therefore held that the lower court incorrectly granted summary judgment to the moving party because the evidence presented by the non-movant's expert witness "[revealed] evidence sufficient to present a question of fact, and hence, a jury question." *Id.* at 812 (alterations added). Similarly, in *William J. Davis v. Tuxedo LLC*, 124 A.3d 612 (D.C. 2015), the Court of Appeals overruled the lower court's granting of summary judgment because "there was no meeting of the minds between the parties on a number of the material terms." *Id.* at 621.

The Court in *William J. Davis* also expounds on what a non-movant must adequately demonstrate to challenge a motion for summary judgment. The Court states that a motion for summary judgment "may not be avoided merely by demonstrating a disputed factual issue," rather, the "opposing party must show that the fact is material and that there is sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Id.* at 624.

**A. LASHES APPLY TO SETTLEMENT
CORP'S INTERPLEADER AND INDEMNIFICATION CLAIMS**

~~A defendant can prevail if he can show on a particular set of facts that the plaintiff's delay was unreasonable and that the delay worked to the defendant's detriment. *Abraham v. Ordway*, 158 U.S. 416, 420 (1805); *Major v. Shaver*, 187 F.2d 211, 212 (D.C. Cir. 1951).~~

Here, under the escrow agreement, if the Sellers fail to provide a settlement agreement resolving their dispute, Settlement Corp has an obligation to file the interpleader on June 1, 2018. Settlement Corp admitted that it failed to file the interpleader on June 1, 2018 upon the failure of the Sellers to reach a written settlement agreement on their dispute. Had Settlement Corp timely filed on June 1, 2018 the interpleader action, depositing the escrowed funds in the courts, a court would have timely resolved the Sellers' issues,

the fund would not have been depleted, and Sellers would have timely received their share. Because it failed to timely file the interpleader on the deadline set for its filing for no reason, it forced Petitioner to request Settlement Corp to refrain from disbursing the escrowed funds until a court order on the Sellers' dispute, and to file a declaratory judgment and quiet title claim to address the Sellers' issues for which the interpleader action was designed to achieve. On July 17, 2018, Petitioner filed her claim for quiet title and declaratory judgment. On July 17, 2019, Judge Pam entered an Order instructing Settlement Corp to equally divide the net sales proceeds between the Petitioner and her spouse Yehdego, prior to paying off the HELOC from Yehdego's share of the sales proceeds. It is obvious that, had Settlement Corp filed the interpleader action, the court would have reached this same result that the July 17 Order reached.

It is apparent that, Settlement Corp failed to timely file the interpleader action to prevent such a result which was unfavorable to Yehdego, and therefore, Settlement Corp was not an impartial stakeholder. An additional evidence of its lack of impartiality is the failure of Settlement Corp to disburse the escrowed funds to the Sellers upon the payment of the HELOC and the fulfillment of the conditions of the escrow agreement.

Here, Settlement Corp was in possession of all facts and there was no question that is reasonably debatable, and to allow it to file an interpleader in the circumstance of this case would serve no meaningful

purpose, and it should not have been allowed to proceed with such filing. Settlement Corp delayed the filing of the interpleader by more than a year, and then filed the interpleader, claiming that the delay it created, i.e., by failing to timely file the interpleader, caused damages to the Purchaser requiring it to withhold a portion of the fund to pay off the damages or file an interpleader for the court to resolve the dispute between the parties.

The Purchaser's baseless claim for per diem damages from the escrowed fund was, as fully explained in the following section was, a legal nullity and undoubtedly unenforceable given that, among other reasons, the SPA on which the Purchaser's claim was based was superseded under the Merger doctrine.

"A stake holder is not entitled to be protected by a court of equity to the extent of being saved from all shadow of risk, and if he or she is in possession of all the facts and there is no question that is reasonably debatable, the stakeholder is not entitled to interpleader."

See, CJS Interpleader, Section 15.

Thus, Petitioner can prevail as the forgoing facts demonstrate that Settlement Corp's delay worked to the Petitioner's detriment, and therefore the Interpleader should have been dismissed. *See, Abraham v. Ordway, 158 U.S. 416, 420 (1805); Major v. Shaver, 187 F.2d 211, 212 (D.C. Cir. 1951)*

A stakeholder's request for attorney's fees may be denied when the stakeholder unreasonably delays

depositing the interpleaded funds with the court. *See*, Wright et al. § 1719 (awarding fees and costs to the stakeholder should not be granted "if the stakeholder has contributed to the need for interpleader by acting in bad faith or by unduly delaying in seeking relief). Here, the trial court awarded \$104,000.00 to Settlement Corp for filing the interpleader and defending against Petitioner counterclaims opposing the interpleader. However, as demonstrated in the forgoing paragraphs, the trial court's order granting an award of \$104,000.00 not only is immodest and depleting the interpleaded fund, but it is also inappropriate because Settlement Corp acted in bad faith or unduly delayed in seeking relief.

**B. CLAIMS AGAINST SETTLEMENT CORP
FOR INTEREST ON THE FUND, BREACH
OF CONTRACT, FIDUCIARY DUTIES.**

It is undisputed Settlement Corp failed, both, to file the interpleader action and to deposit the escrowed fund in the court's registry by the deadline set in the escrow agreement, which contained a "Time is of the essence" provision. What is in dispute is whether the exculpatory clause in the escrow agreement requiring conduct that is willful misconduct or gross negligence protects Settlement's failure from liability

Under the common law of Maryland, which is followed in the District of Columbia, such failure to comply with the clear terms of an agreement is considered to be the result of a failure to read the agreement or an

intentional deviation from the agreement. *See below, n. 1.* With respect to the latter, at least, a jury could reasonably rely on these facts, without any additional extrinsic evidence, and conclude that the defendant engaged in gross negligence. Extrinsic evidence is not necessary when the records of the moving party are inherently inconsistent. *Osbourne v. Capital City Mort. Corp.*, 667 A.2d at 1321 (D.C. 1995) (Because of questions raised within its own records, the mortgagee failed to meet its burden of demonstrating the absence of factual dispute)¹ Thus, these facts demonstrate genuine disputed facts that Settlement Corp's failure to comply with the terms of the escrow agreement could amount to conduct of gross negligence that needs to be determined at trial. Thus, the trial court's dismissal of Gidey's counterclaims by granting summary judgment in favor of Settlement Corp for lack of proof demonstrating that the conduct amounted to gross negligence, or willful misconduct, was error.

C. PURCHASER'S CLAIM FOR BREACH OF CONTRACT AND FOR ATTORNEY'S FEES AND COSTS.

The Purchaser, 5401 8th St., admits that it is claiming breach of contract and for attorney's fees and

¹ "Ordinarily, unless the facts are so clear as to permit a conclusion as a matter of law, it is for the trier of fact to determine whether a defendant's negligent conduct amounts to gross negligence." *See, Jacob v. Davis*, 739 A.2d 904; 128 Md. App. 433. *See, Carleton v. Winter*, 901 A.2d 174 (D.C. 2006) referring to Maryland case law in this regard.

costs relying on the provisions of the Sale and Purchase Agreement (SPA). Thus, the preliminary question to be resolved was whether the Purchaser can assert claims from the fund for damages and attorneys' fees and costs based on the SPA, when the SPA, which doesn't contain a survival provision, was superseded by the doctrine of *Merger*, and when under the rule of the formal transfer of title, the title to the money had passed to the Sellers upon the fulfillment of the conditions of the escrow agreement. The answer is no. Under the doctrine of *Merger* followed in the District of Columbia and the neighborhood states of Maryland and Virginia, the transfer of the deed to the purchaser on the settlement date, i.e., as in here on May 1, 2018, was the final execution of the whole contract, and that all rights and remedies must be determined by the deed, not by the Sale and Purchase agreement, as the transfer of the deed at settlement is presumed to supersede all preceding negotiations and agreements. This doctrine of *Merger* accords finality to real estate transactions. The development of this doctrine has followed the contours of the parole evidence rule. *See, Stevens v. Milestone*, 190 MD 61, 65, 57 A.2d 292, 293 (1948).² *See, also Ferguson v. Casper*, 359 A.2d 17 (1976), (citing *Mehlman v. Chadwick*, 234 F. Supp. 1014 (D.D.C.

² The Common Law of the District of Columbia includes all Common Law in force in 1801. *See, D.C. Code Section 45-401 (2001)*. Thus, A Maryland Court of Appeals decision expounding the Common law of that state is "an especially persuasive authority . . ." *See, Forest v Verizon Communications, Inc.*, 805 A.2d 1007, 1012 (D.C. 2002) (quoting *Napoleon v. Heard*, 455 A.2d s901, 903 (D.C. 1983).

1964). Therefore, the SPA was superseded, and cannot be a valid basis for the Purchaser's claims for damages and attorneys' fees. Moreover, under the rule of the forma transfer of title in real estate transactions, upon the fulfillment of the conditions of the escrow agreement for the distribution of the fund to the sellers, the title to the property as to the deed passes to the Purchaser, and the title to the purchase money passes to the sellers. This puts an end to any claim to a portion of the fund by the purchaser, and also puts an end to the dual agency of the escrow agent, making it to be the sole agent of the purchaser as to the title and to the sellers as to the purchase money. *Id. Ferguson v. Casper*. As in this case, the Purchaser's baseless claim for damages and attorneys' fees and costs are made after the title to the purchase money passed to the sellers, the Purchaser's claims cannot be a valid claim on the purchase money. Furthermore, under the precedent from the state of Maryland, through the District of Columbia derives its law, when it became clear on the May 1, 2018 settlement date that Sellers would not meet its demand to provide it with clean title, the Purchaser was required to cancel the contract or accept it as it was and reach settlement. *See, 3511-13th St. Tenants v. 3511 13 St. Res.*, 922 2d 439 (D.C. 2007). Here, as a matter of fact the Purchaser did accept the title as it was and reached settlement closing the purchase of the property. After accepting the title as it was, the Purchaser cannot now after over a year ask to be compensated for the delay caused for obtaining a clean title. Given this, the D.C. Court of Appeals' affirmance of the trial court's ruling that the SPA was not

superseded, and that it entitles the Purchaser to damages from a portion of the escrowed funds, even though the SPA was superseded, and the title to the money had passed to the Sellers, was error *See, April 20, 2020 Order*. Because of these conflicts with controlling precedents, the trial court's decision granting summary judgment to the Purchaser's claims for damages and to a portion of the escrowed funds was error, and should be reversed.

II. REGIONAL STATE LAW SUPPORTS THE PETITIONER

Under the common law of Maryland, the issue of whether the agent's action or omission amounted to willful misconduct or gross negligence is an issue that requires determination at trial. *Jacob v. Davis*, 739 A.2d 904; 128 Md. App. 433. The facts here are clear. Settlement Corp failed to comply with the clear instructions of the escrow agreement to file the interpleader and to deposit the escrowed funds in the court's registry on June 1, 2018. Whether its conduct in failing to comply with the clear terms of the escrow agreement constituted gross negligence is an issue to be determined by the trier of fact. *See, Maryland and Virginia*, and the whole eastern jurisdictions of the United States, follow the doctrine of *Merger*, and the formal rule of the transfer of title to the property as to the deed, and to the transfer of the purchase money. Please, see the discussion of the rule of the formal transfer, and the doctrine of *Merger, in real estate* transactions and their application to this case in

section above.³ See, *Ferguson v. Casper*. Here, also the facts are clear. Under the *Merger* doctrine and the rule of the formal transfer of title, the Purchaser cannot assert a valid claim for damages or attorneys' fees and costs based on the superseded SPA. In addition, the escrow agent faces no liability to the Purchaser for any claims it makes with respect to the purchase money. While it faces no liability to the Purchaser, it is liable to the Seller(s) for any failure to disburse the escrowed fund to the Seller(s) upon the fulfillment of the conditions of the escrow agreement. Here, the conditions of the escrow agreement were completely fulfilled upon the entry of the April 17, 2019 Order of the trial court and the payment of the HELOC from Yehdego's portion of the sales proceeds.

III. THE PREFERENCE TO MAKE DECISIONS ON THE MERITS.

The instant effort by Respondents to summarily prevail in the Case runs counter to that long-standing "judicial preference for the resolution of disputes on the merits rather than by the harsh sanction of dismissal," *Bond v. Wilson*, App. D.C., 398 A.2d 21 (1979); *Schwab v. Bullock's Inc.*, 508 F.2d 353, 355 (9th Cir. 1974); *Tolson v. Hodge*, 411 F.2d 123, 130 (4th Cir. 1969); *Rooks v. American Brass Co.*, 263 F.2d 166, 169 (6th Cir. 1959) (per curiam); *Hiern v. St. Paul-Mercur' Indem. Co.*, 262 F.2d 526, 530 (5th Cir. 1959); *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242, 245 (3d

³ See also *Stevens v. Milestone*.

Cir. 1951); and see 6 J. Moore, Federal Practice 55.10[1], at 55-235 to 236 (2d ed. 1976). Furthermore, because D.C. Superior Court Rules track the Federal Rules, this Court may look to the decisions of the Federal Court interpreting the Federal Rules as persuasive authority in interpreting the local rule. See *Puckrein v. Jenkins*, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005). The finality achieved through entry of dismissal should readily give way to the competing interests in reaching the merits of a lawsuit.

IV. CONCLUSION

A stakeholder who delayed the filing of an interpleader action for over a year after the fulfillment of the conditions set forth in the escrow agreement for such filing "should not now be permitted to use interpleader, an equitable remedy, to divest itself of any liability when it has use of this fund for over a year." In this case, the delay also caused the Petitioner into the expense of bringing a law suit in the trial court to clear the title to the property, and to distribute the fund to the Sellers. As discussed above, whether the conduct of a stakeholder amounts, at least, to gross negligence is a question to be determined at trial. Here, the facts are clear. The stakeholder would be liable if it is determined at trial that his conduct amounted, at least to gross negligence. Upon such a determination, it will be liable for interest on its use of the fund, for breach of the escrow agreement, as well as for breach of fiduciary duties, and should not be permitted to use the interpleader to divest itself of any of these liabilities.

Moreover, the trial court granted summary judgment to Respondents awarding them over \$200,000.00 as attorneys' fees and costs, not including the damages to the Purchaser in the amount of \$88,000.000 for failure to provide it clean title, which, by law and justice, are not owing to Respondents. Indeed, Respondent Settlement Corp did not demonstrate that it should be permitted to file the interpleader after such a long delay. The Purchaser also did not, and given that the SPA was superseded, cannot demonstrate that it is entitled to damages of \$88,000.00 and attorneys' fees and costs of \$100,000.00

A blind eye was turned by the Trial Judge, and the Court of Appeals, to fundamental, hard fought Common Law, Statutory and Constitutional rights. Perhaps, a simple anecdote that demonstrates this blind eye is the absence of any mention in D.C. Court of Appeals Order affirming the unusual and excessive attorneys' fees and costs of over \$200,000.00 ordered by the trial court to Respondents. No citizen, no matter his or her status or how he or she is regarded, should ever be forced to shred rights at the Courthouse Gates as is demonstrated here.

Respondents' Motions for Summary Judgment were premature and should have been denied. The entry of Summary Judgments for the Respondents in the circumstances of this case deviate from the notion

of due process in a way unimaginable by any treatment
of the subject.

Respectfully submitted,

Roda Gidey

Petitioner

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August 11, 2022

App. 1

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 20-CV-0356, 20-CV-0395, and 20-CV-0397

RODA T. GIDEY, APPELLANT,

v.

SETTLEMENT CORP., 5401 8TH ST NW, LLC, and
YEEKKALLO YEHDEGO, APPELLEES

Appeals from the Superior Court
of the District of Columbia
(CAB-4678-19)

(Hon. Hiram E. Puig-Lugo, Motions Judge)

(Submitted October 21, 2021 Decided April 8, 2022)

Before GLICKMAN and DEAHL, *Associate Judges*,
and THOMPSON, *Senior Judge*.*

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: These consolidated appeals arise out of an interpleader action and involve a dispute between an estranged wife (appellant Roda T. Gidey) and husband (Yeekkallo Yehdego¹); appellee 5401 8th St NW, LLC ("5401 8th St"), the purchaser of real property the couple owned; and appellee Settlement Corp.,

* Judge Thompson was an Associate Judge of the court at the time of submission. On October 4, 2021, she was appointed as a Senior Judge, but she continued to serve as an Associate Judge until February 17, 2022. *See* D.C. Code § 11-1502 & 1504(b)(3) (2012 Repl.). On February 18, 2022, she began her service as a Senior Judge. *See* D.C. Code § 11-1504.

¹ Mr. Yehdego has not filed an appeal or an opposition brief, but is the adverse party with respect to one of Ms. Gidey's cross-claims discussed *infra*.