APPENDIX

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(June 15, 2018)

APPENDIX A

DISTRICT OF COLUMBIACOURT OF APPEALS

Nos. 23-CV-0343 & 23-CV-0779

DONATA EDWARDS, APPELLANT F I L E D

v. MAY 01 2025

District of Columbia
COURT OF APPEALS

U.S. BANK NATIONAL ASSOCIATION
TRUSTEE FOR RMAC TRUST, SERIES 2016-CTT et al.,
APPELLEES.

Appeals from the Superior Court
of the District of Columbia
(2015-CA-002197-R(RP))

(Hon. Maurice A. Ross, Trial Judge)

(SUBMITTED FEBRUARY 26, 2025 DECIDED MAY 1 2025)

Before DEAHL and HOWARD, Associate Judges, and GLICKMAN, Senior Judges

MEMORANDUM OPINION AND JUDGMENT

Per curiam: These consolidated appeals relate to the foreclosure of Donata Edwards's real property located at 608 Galveston Place SE in Washington, D.C. by U.S. Bank National Association (U.S. Bank or the Bank). Edwards

challenges the Superior Court's December 12, 2006, dismissal of her counterclaims for failure to state a claim, and the court's June 18, 2018, grant of summary judgment in favor of U.S. Bank and the court's subsequent ratification of the foreclosure sale and the accounting thereof. Appellant argues that her counterclaims alleging a violation of the D.C. Consumer Protection Procedures Act (CPPA and fraud were adequately pled and should not have been dismissed. She also claims that the court should not have granted summary judgment, nor ratified the sale and accounting, because (1) U.S. Bank was without standing to foreclose, (2) a January 3, 2018, court order was still in effect which should have stayed the sale, and (3) the foreclosure sale was held in violation of the Mayor's March 11, 2020, declarations of public and public health emergencies because of COVID-19. For the following reasons, we affirm the trial court in all respects.

I. Background

The property at issue, located at 608 Galveston Place SE, was Edwards's residence, which she had owned as a tenant in common with Linda Pellum. On December 8, 2006, Edwards and Pellum encumbered the property with a deed of trust securing an adjustable rate note in the principal amount of $212,000. Both Edwards and Pellum signed the deed of trust but only Pellum signed the note. The original lender, Resource Bank, assigned its rights under the note and deed of

trust to Nationstar Mortgage, LLC., U.S. Bank's predecessor-in- interest.

After Pellum defaulted on the note and failed to cure, Nationstar accelerated the loan and sought judicial foreclosure in Superior Court pursuant to D.C. Code § 42-816. In response, Edwards and Pellum answered and filed a counterclaim consisting of two counts. Count one asserted that Nationstar violated the CPPA by initiating foreclosure proceedings "without giving [Edwards and Pellum] the right to cure [the] mortgage default and to reinstate the loan and without providing [them] with notice of said default." Count one also stated that, "[I]stead of providing the amount necessary to cure default" as required by law. Nationstar "accelerated the loan and [sought] an amount that incorrectly represents the amount to prevent foreclosure." Count two of the counterclaim asserted, without specificity, that Nationstar "misrepresented the truth" and "repeatedly ignored requests" made by the defendants, and that Nationstar's demand[ing] full payment of the loan instead of providing" the right to cure the default or offering a loan modification plan was "consistent with a fraudulent intent to take [the defendants'] property."

At the initial scheduling conference in Superior Court, the case was referred to mediation and the parties reached an agreement in principle whereby Pellum would quitclaim her interest in the property to Edwards who could then "assume the

mortgage" or "execute a new promissory note" and pursue loss mitigation with Nationstar. Subsequently, the court granted Nationstar's motion to dismiss the counterclaim for failure to state a claim on which relief could be granted.

Eventually, Edwards reported that Pellum had successfully quitclaimed her interest in the property to her. However, after nine months went by without Edwards having either submitted a complete loss mitigation packet or having responded to Nationstar's first discovery requests, Nationstar moved for summary judgment. While that motion was pending, the parties informed the court at a status hearing that Edwards had made the first payment of a trial modification plan but, after another four months, Edwards had defaulted on that plan. Then, on November 1, 2017, Edwards moved to withdraw or strike Nationstar's discovery requests, claiming that she had never received them. Without ruling on that motion however, on November 15, 2017, the court entered summary judgment for Nationstar and issued a decree for the sale of real property (November 15 Order).

On December 5, 2017, Edwards filed a motion for reconsideration of the November 15, Order, arguing that it was issued erroneously before the court had ruled on her prior motion to withdraw/strike Nationstar's discovery requests. Ten days later, however, before the court had ruled on the December 5 motion, Edwards filed a notice of appeal from the November 15 Order. Then, on

January 3, 2018, she filed an emergency motion for stay of foreclosure and the foreclosure sale pending her appeal. The trial court granted this latter motion the same day, ordering "all matters in the[e] case . . . STAYED pending the resolution of Defendants' appeal" (January 3, 2018 Order).

On January 25, 2018, however, this court sua sponte held the notice of appeal in abeyance because "one or more timely post-trial tolling motions [were] pending in the Superior Court" (in particular, Edwards's motion for reconsideration). In response, the trial court then granted Edwards's November 1, motion to withdraw/strike the discovery; gave Nationstar fourteen days to re-serve the discovery requests; and granted in part Edwards's December 5 motion for reconsideration, "holding the previously entered [November 15 Order] in abeyance until the next status hearing" and giving the defendants thirty days to file an opposition to Nationstar's motion for summary judgment.

After more than three months passed without a response from the defendants, the trial court on June 15, 2018, entered an order granting what it referred to a Nationstar's "renewed"[1] motion for

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[1] As appellee points out, although the court styled the June 15, 2018 Order as granting a "renewed" motion for summary judgment, no new motion had been filed. The mistaken characterization is inconsequential.

summary judgment and a decree for the sale of the real property (June 15, 2018 Order).
The court denied Edwards's request that it vacate the June 15, 2018 Order. Almost a year later, on May 10, 2019, Edwards filed an emergency motion for clarification and enforcement of stay in which she argued that the trial court's January 3, 2018 Order staying foreclosure and sale pending appeal was still in effect. The trail court denied that motion on May 30, 2019, and ordered that the stay be lifted effective thirty days from the date of the order (May 30 Order). Shortly thereafter, U.S. Bank replaced Nationstar as the plaintiff.

The property was sold on March 17, 2020, and the court ratified the sale. About a month later, U.S. Bank filed a motion to ratify the accounting, release the bond, and close the case, which the court granted. Edwards then filed the instant appeal.

II. Analysis

On appeal, Edwards argues that the trial court should not have ratified the sale or the accounting because U.S. Bank had "no standing to foreclose" on the property. According to appellant, "[s]ince Pellum was the sole maker on the Note. . . she had to be on the title in order for U.S. Bank . . . to have the right to foreclose on the property in the event of Pellum's default on the loan." Accordingly, appellant argues, when Pellum quitclaimed her property interest to Edwards, the note became

"separated' from the deed of trust and the Bank's lien was" no longer secured by the property and in effect . . . because an unsecured debt was "no longer secured by the property and in effect . . . became an unsecured debt against Pellum," thereby removing the Bank's ability to foreclose on the property. Appellant also claims that the Bank "relinquished its possession of the Promissory Note," when it" requested that Pellum quitclaim her entire interest in the property to Edwards but filed to have Edwards execute a new note or assume the existing note."

Next appellant claims that the June 15, 2018 Order entering summary judgment for Plaintiff is void by operation of the January 3, 2018 Order that stayed all foreclosure proceedings pending appeal. Thus, according to appellant, the subsequent foreclosure sale and ratifications thereof were, in turn also void. Lastly, appellant argues that the sale was "void" because the Mayor had issued orders in March 2020 (Mayor's Order 2020-045 and -046) that declared public and public health emergencies and purportedly "stayed all gatherings of individuals" including "gatherings for foreclosure sales, foreclosure auctions, and all actions to perfect foreclosure during the public health emergency." Appellant also asserts that the moratorium on evictions enacted as part of the COVID-19 Response. Emergency Amendment Act of 2020 included "homeowners facing foreclosure" and thus "prevented the sale of the property on March 17,

2020."

In addition, in challenging the dismissal of her counterclaims, appellant relies on a number of new arguments raised here for the first time, additional information not found in her original counterclaim, and references to events that had not taken place when the counterclaim was originally filed.[2]

For its part, U.S. Bank argues that Edwards signed the deed of trust securing the loan and that the transfer of Pellum's property interest to Edwards had no effect on the Bank's security interest or its

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[2] For example, appellant claims that Nationstar should have sent the notice of default to both defendants, not just Pellum, and that its failure to do so was "consistent with a violation [] of the CPPA and fraud." Edwards also alleges that Nationstar committed fraud when, on April 13, 2016- more than a year after the defendants filed their counterclaim-it "deceived" her into believing that, once Pellum quitclaimed her property interest to Edwards, Nationstar would permit Edwards to either assume the note, execute a new note, or obtain a loan modification. Thus, according to appellant, when Nationstar instead sought to foreclose on the property without preparing a new note or an assumption," it engaged in deceptive trade practices under the CPPA and committed fraud. Edwards acknowledges that Nationstar took these allegedly illegal actions "after it obtained a dismissal" of the counterclaims.

right to foreclose when the loan was not repaid. The Bank also argues that nothing in the January 3, 2018 Order indicated that subsequent orders would be void or invalid. Finally, the Bank argues that the two Mayor's Orders cited by appellant did not stay public gatherings or foreclosure proceedings, and that the 2020 eviction moratorium did not apply to foreclosure sales.

A. Appeal from Dismissal of Counterclaim

We begin by addressing the trial court's dismissal of appellant's counterclaim. On review of a dismissal made pursuant to D.C. Sup. Ct. Civ. R. 12(b)(6), the only issue "is the legal sufficiency of the complaint," [3] which we review de novo. [4] The complaint need only "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face"[5] and we "construe the complaint in the light most favorable to the plaintiff." [6] However, when a complaint alleges

3 *Grayson v. AT&TCorp.*,15 A.3d 219, 228-29 (D.C. 2011) (en banc).

4 *Scott v. Fedchoice Fed. Credit Union,* 274 A.3d 318, 322 (D.C. 2022).

5 Potomac. Dev. Corp. v. District of Columbia, 28 A.3d 531, 544 (D.C. 2011).

6 Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP, 68 A.3d 697,709 (D.C. 2013).

fraud, D.C. Sup. Ct. Civ. R. 9(b) holds the pleader to a higher standard,"[7] and we require the pleading to state the "time, place and content of the false misrepresentations, the fact misrepresented, and what was retained or given up as a consequence of fraud."[8]

7 See D.C. Sup. Ct. Civ. R. 9(b) (noting that the circumstances constituting fraud or mistake shall be stated with particularity").

8 D'Ambrosio v. Colonnade Council of Unit Owners, 717 A.2d 356, 361 (D.C. 1998).

9 See id.

10 See supra, note 2.

11 Grayson, 15 A.3d at 228-29.

12 *Nwaneri v. Quinn Emanuel Urquhart & Sullivan,* 250 A.3d 1079, 1082 (D.C. 2021) (brackets and internal quotation marks omitted).

13 *Kate v. District of Columbia,* 285 a.3D 1289, 1301 (D.C. 2022).

14 *Joeckel v. Disabled Am. Veterans,* 793 A.2d 1279, 1281 (D.C. 2002).

Count One of appellant's counterclaim, which purports to assert that Nationstar violated the CPPA, consists only of three short paragraphs in which appellant states that Nationstar "Initiated foreclosure proceedings. . . without giving [her] the right to cure mortgage default and to reinstate the loan and without providing [her] the right to cure mortgage default and to reinstate the loan and without providing [her] with notice of said default" and that "[I]nstead of providing the amount necessary to cure default. . . [Nationstar] has accelerated the loan and seeks an amount that incorrectly represents the amount necessary to prevent foreclosure." Appellant does not explain how this alleged behavior constitutes a violation of the CPPA, nor points to any relevant provision

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[15] *Sibley v. St. Albans Sch.*, 134 A.3d 789, 809 (D.C. 2002).

[16] *Kate*, 285 A.3d at 1301.

[17] *Crawford v. Kate*, 32 A.3d 418, 436 (D.C. 2011) (citations and quotations omitted).

[18] Sup. Ct. Civ. R. 56(e)(2). See also *Magwood v. Giddings*, 672 A.2d 1083, 1087 (D.C. 1996) ("In the summary judgment context, the court is permitted to consider the facts asserted by [the movant] as 'admitted,' except to the extent that such facts are 'actually controverted' in [the] opposition.").

therein. Thus, even taking the allegations as true, appellant did not state a plausible claim for relief.[9]

The second count of appellant's counterclaim purports to assert a claim of fraud. It states that Nationstar "misrepresented the truth" and ignored various requests for information regarding the loan sent by appellant and summarily asserts that these actions were "consistent with a fraudulent intent to take [appellant's] property." Appellant did not provide any of the specific information required to sufficiently plead fraud and, consequently, did not state a plausible claim for relief. [9]

In support of its counterclaim on appeal, appellant advances new arguments and proffers additional information not found in the pleading.[10] However, our review of a dismissal pursuant to Rule 12(b)(6) is limited to the allegations made in the complaint itself [11] and "[w]e ordinarily do not consider issues raised for the first time on appeal.[12] We see no exceptional circumstances warranting a

departure from that practice here.

B. Appeal from Summary Judgment, Ratification of Foreclosure Sale, and Ratification of Accounting

We review the grant of a motion for summary judgment de novo.[13] In so doing, "we conduct an independent review of the record, and our standard of review is the same as the Superior Court's standard in considering the motion for summary judgement."[14] "At the summary judgment stage, the trial court does not make credibility determinations or weigh the evidence, which are functions reserved for the trier of fact."[15] Rather, "the evidence must be viewed in the light most favorable to the party opposing the motion for summary judgment."[16]

Although Sup. Ct. Civ. R. 12-I(e) permits the court to consider unopposed motions as conceded, in the summary judgment context we have held that courts may not do so "given the requirement of rule

15 *Sibley v. St. Albans Sch.*, 134 A.3d 789, 809 (D.C. 2002).

16 *Kate*, 285 A.3d at 1301.

56(c) that the court itself must examine the record to confirm that there is no genuine issue of material fact and that the movant, on the basis of the undisputed material facts, is entitled to judgment as a matter of law."[17] Even so, "if a party fails to properly . . . address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion."[18]

We find no reason to overturn the court's judgment in this case. In its motion for summary judgment, the Bank made a prima facia case for judicial foreclosure by demonstrating, with supporting documentary evidence, that it was the current holder of the note and the beneficiary of the deed of trust and that Pellum had defaulted on the note and failed to cure.[19] The June 15 Order reflects that

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17 *Crawford v. Kate*, 32 A.3d 418, 436 (D.C. 2011) (citations and quotations omitted).

18 Sup. Ct. Civ. R. 56(e)(2). See also *Magwood v. Giddings*, 672 A.2d 1083, 1087 (D.C. 1996) ("In the summary judgment context, the court is permitted to consider the facts asserted by [the movant] as 'admitted,' except to the extent that such facts are 'actually controverted' in [the] opposition.").

19 "A plaintiff makes a prima facie case for judicial foreclosure by showing that it is the current holder of the Note and the beneficiary of the Deed of Trust;

the court properly examined the record as to whole and found that, because the defendants never filed an opposition nor controverted any of the Bank's factual assertions, there was no genuine issue of material fact.[20] Thus, the Bank was entitled to summary judgment and the court properly ratified the foreclosure sale and the accounting thereof.

Edwards's arguments to the contrary are unavailing. First, Edwards's contention that the Bank did not have standing to foreclose on the property reflects a misunderstanding of the law of mortgages. [21] "[A] notion of fundamental

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that the defendant defaulted on the Note and failed to cure the default; and that the plaintiff is entitled to enforce the Deed of Trust through a judicial foreclosure sale of the Property." *Stevenson v. HSBC Bank USA, Nat'l Ass'n, as Tr. For SG Mortg. Sec. Tr 2006-FREI Asset Backed Certificates, Series 2006-FREI,* 324 A.3d 295, 307 (D.C. 2024) (internal quotation marks omitted).

[20] See Sup. Ct. Civ. R. 56(e)(2); *Magwood,* 672 A.2d at 1087.

[21] Deeds of trust "are viewed as generally equivalent to common law mortgages, a mortgage being by definition an interest in property given as security for the payment of a debt." "*Yasuna v. Miller,* 399 A.2d 68, 71 (D.C. 1979).

importance is that the security. [(i,e., the deed of trust)]is inseparable from the obligation [(i,e., the note)] for the [(i,e., the deed of trust's)] sole function is to serve as security for the performance of the obligation."[22] "Indeed, the note and the [(i,e., the deed of trust)] can be considered merely different parts of a single contract.[23] Thus, to find that Pellum's transfer of her property interest to Edwards somehow separated the note from the deed of trust (or, for that matter, caused the Bank to lose possession of the note), would be to ignore a fundamental principle of mortgage law. [24] Moreover, even setting that issue aside, it remains the case that a transfer of property alone does not affect the right of a holder of a deed of trust to foreclose: "the land always remains 'subject to' the [the deed of trust], that is bears the principal

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22 *Id* at 71-72.

23 *Id* at 72.

24 Although appellant suggests that the Supreme Court case *Carpenter v. Longan* supports her argument, in reality the Court there recognized the same principle that we do here-"the note and mortgage are inseparable." 83 U.S. 271, 274 (1872). Besides, *Carpenter* involved an assignment of the note and mortgage, not the transfer of a property interest via quit claim deed. *See id.*

burden of the [the deed of trust].[25] Nor is it of any consequence that only Pellum signed the note: when Edwards executed the deed of trust, she agreed to put her interest in the property up as collateral for the obligation, regardless of whether she herself was the borrower.[26] Appellant simply gives us no reason to believe that U.S. Bank and its predecessors did not have standing to foreclose.
Second, although Edwards is correct that the trial court did not affirmatively lift the stay imposed by the January 3, 2018, when we held the appeal in abeyance pending the court's resolution f Edwards's December 5, 2017, motion for reconsideration. In accordance with our decision, the trial court properly proceeded to consider (and grant) that motion on February 21, 2018- without any objection from appellant-which in turn, rendered the appeal moot. Thus, when the court granted summary judgment on June 15, 2018, the January 3 Order was no longer in effect.

Lastly Appellant is mistaken that Mayor's Order 2020-045 and -046, which were issued on March 11, 2020, stayed all gatherings, including foreclosure sales and auctions. Those orders declared public and public health emergencies and provided various directives to different District

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25 *Id at 73.*

26 *See Stevenson,* 324 A.3d at 306-07.

government entities on how to respond to the COVID-19 pandemic.[27] Neither order contained a ban on public gatherings nor even mentioned foreclosure.[28] Likewise, the COVID-19 Response

27 See Mayor's Order 2020-45, *Declaration of Public Emergency; Coronavirus (COVID-19),* Executive Office of the ; Mayor (March 11, 2020), https://perma.cc/VBY9-9ME; Mayor's Order 2020-46, *Declaration of Public Health Emergency: Coronavirus (COVID-19),),* Executive Office of the Mayor (March 11, 2020), https://perma.cc/2BLY-DG5Q.

28 We note that on March 16, 2020-one day before the foreclosure sale- the Mayor issued a third Order, which prohibited certain public gatherings in the District of Columbia of fifty or more persons. Mayor Order (March 16, 2020). However, Edwards has not developed an argument or pointed to a factual basis for an argument that the March 17 foreclosure sale was impacted by this restriction. There is no claim or indication, for example, that fifty or more people would attend a foreclosure sale but for that restriction, or that anyone who sought to attend this foreclosure sale was precluded from doing so by the prohibition.

[29] See COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-247, 67 D.C. Reg, 3093 (Mar. 17, 2020). In its brief, appellee U.S. Bank

notes that two years later, in 2022, the Council of the District of Columbia enacted legislation purportedly imposing a moratorium on foreclosures retroactively to March 11, 2020. See D.C. Act 24-320, D.C. Code § 42-851.01 (a)(1)(A) ("Notwithstanding any other provision of District law, during the time period from March 11, 2020, to June 30, 2022, no: (A) Residential foreclosure may be initiated or conducted under § 42-815 or § 42-816"). Edwards did not reply or even mention this statute in her opening brief on appeal, though she filed that brief in 2024; moreover, even in her Reply Brief, Edwards continues to ground her argument on her interpretation of the 2020 Mayor's Orders as having themselves prohibited foreclosures. Under these circumstances, we consider Edwards to have forfeited any argument for relief based on the retroactive effect of the 2022.legislation on a previous foreclosure sale that was lawful at the time it was held. See *Jacobson Holman, PLLC v. Gentner,* 244 A.3d 690, 700 n.10 (D.C. 2021) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation in an initial brief are generally deemed waived, and elaboration in the reply brief comes too late." (internal quotation marks and brackets omitted)); *Massey v. Massey,* 210 A.3d 148, 154 n. 12 (D.C. 2019) ("It is the longstanding policy of this court not to consider arguments raised for the first time in a reply brief.").

Emergency Amendment Act of 2020 cited by appellant imposed a moratorium only on evictions, not on foreclosure.[29]

III. Conclusion

For the foregoing reasons, the dismissal of Edwards's counterclaim, the entry of summary judgment in favor of U.S. Bank, and the ratification of the foreclosure sale and the accounting there are hereby

Affirmed

ENTERED BY DIRECTION OF THE COURT

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

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