DISTRICT OF COLUMBIA COURT OF APPEALS

CONSOLIDATED APPEAL NOS.
22-CV-62 & 22-CV-97

LDP ACQUISITIONS, LLC, Appellant,

v.

CAPTAIN REED 2640, LLC, Appellee.

CAPTAIN REED 2640, LLC, Appellant/Cross-Appellee,

v.

LDP ACQUISITIONS, LLC, Appellee/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT AND CROSS-APPELLEE LDP ACQUISITIONS, LLC

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DISTRICT OF COLUMBIA
COURT OF APPEALS

LDP ACQUISITIONS, LLC, Appellant/Cross-Appellee,

Civil Action No. 2021 CA 003812 R(RP)

v.

CAPTAIN REED 2640, LLC, Appellee/Cross-Appellant.

CERTIFICATE REQUIRED BY RULE 28(A)(1) OF THE RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

The undersigned, counsel of record for Appellant and Cross-Appellee LDP Acquisitions, LLC, certifies that the following listed parties and amici appeared below:

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These representations are made in order that judges of this Court, *inter alia*, may evaluate possible disqualification or recusal.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Superior Court of the District of Columbia erred in granting Appellee/Cross-Appellant Captain Reed 2640, LLC's Motion to Cancel Notice of *Lis Pendens*.

2. Whether the Superior Court of the District of Columbia erred in its rulings in the January 20, 2022 Omnibus Order, including the determination that Appellant/Cross-Appellee LDP Acquisitions, LLC did not state plausible claims in its Complaint and that certain claims would therefore be dismissed.

STATEMENT OF THE CASE

This is a case in which valid, well-pleaded, plausible claims supported by ample factual detail were wrongly short-circuited, on a Sup. Ct. Civ. Rule 12(b)(6) motion to dismiss. Based on the dismissal, a related notice of *lis pendens* was summarily canceled, without justification under any of the permitted statutory grounds. This interlocutory appeal is from an Omnibus Order entered by Judge Anthony C. Epstein of the Superior Court of the District of Columbia in favor of Appellee/Cross-Appellant Captain Reed 2640, LLC ("Captain Reed") regarding claims by Appellant/Cross-Appellee LDP Acquisitions, LLC ("LDP Acquisitions") for declaratory judgment, specific performance, breach of contract, and fraud, accompanied by a filing of a notice of pendency of action (*lis pendens*) pursuant to D.C. Code § 42-1207.

Interlocutory appeal is permitted from such an order, under the collateral order doctrine. *See, e.g., McAteer v. Lauterbach*, 908 A.2d 1168, 1170-71 (D.C. 2006). (Captain Reed's cross-appeal, however, is apparently based on the denial of sanctions under D.C. Code § 42-1207(d)(1) (App. 58-59), and it has cited *McAteer* as the grounds upon which it can pursue an immediate appeal of the ruling. *McAteer*, however, does not permit an interlocutory appeal of such an issue.)

The case itself involved acquisition and development efforts regarding a nine-lot very valuable parcel of real estate located in Northeast Washington, D.C. (the "Property"), adjacent to the Red Line of the Metro, owned by Captain Reed. Captain Reed had indicated in late 2019 that it was going to offer the Property for sale, which engaged the interest of several developers, including a District-based entity, LDP Acquisitions, and an entity from Houston, Texas, Hanover R.S. Limited Partnership ("Hanover"). When Hanover's negotiations failed, Hanover filed a related lawsuit in the Superior Court, styled as *Hanover R.S. Limited Partnership v. Captain Reed 2640, LLC and LDP Acquisitions, LLC,* Case No. 2020 CA 004322 B (the "Prior Lawsuit").

After the failure of negotiations with Hanover, Captain Reed turned to LDP Acquisitions to negotiate a sale of the Property. Hanover then joined LDP Acquisitions in the Prior Lawsuit. LDP Acquisitions and Captain Reed entered into a letter of intent dated May 1, 2021 agreeing that they would negotiate in good faith

towards a Purchase and Sale Agreement and the sale of the Property to LDP Acquisitions. Captain Reed also induced LDP Acquisitions to wait on negotiating and executing the Purchase and Sale Agreement (ostensibly not to add fuel to Hanover's Prior Lawsuit), and led LDP Acquisitions to incur significant effort and expense to obtain valuable entitlements that enhanced the Property's fair market value. LDP Acquisitions obtained an Order dismissing it from the Prior Lawsuit on August 19, 2021. App. 37-40. Nevertheless, Captain Reed thereafter inexplicably refused to negotiate or deal with LDP Acquisitions and apparently re-engaged with Hanover, abruptly disavowing its obligations to LDP Acquisitions.

LDP Acquisitions then filed this lawsuit on October 19, 2021 and the accompanying notice of *lis pendens* on October 25, 2021, to protect its rights and interests and to recover related damages. In its Complaint, LDP Acquisitions requested that the Court: (1) adjudicate and declare that LDP Acquisitions has a superior right and interest, and an enforceable right and interest, against the Property and for good faith negotiations towards a Purchase and Sale Agreement for the Property, (2) award specific performance of the obligation of Captain Reed to proceed with good faith negotiations towards a Purchase and Sale Agreement for the Property, (3) enter judgment in favor of LDP Acquisitions and against Captain Reed in an amount to be proven at Trial, but at least $5 million, plus prejudgment and postjudgment interest and attorneys' fees, and costs of the lawsuit, and (4) award

punitive damages in an amount to be proven at Trial, but at least $10 million. App. 18-24.

The case was assigned to the Honorable José M. López, Civil Calendar 14. Captain Reed filed a motion to dismiss the Complaint on November 12, 2021 and moved separately on November 19, 2021 to cancel the *lis pendens*. The case was reassigned to Judge Yvonne M. Williams as of December 31, 2021, but, in the interim, Judge López retired and the motions had apparently been sent to Judge Epstein, who ruled on them as set forth in the January 20, 2022 Omnibus Order. App. 47. The next day, Judge Williams presided over the Initial Conference in the case and issued a Scheduling Order.

Although the Superior Court has limited power to grant a motion seeking to cancel the notice of *lis pendens* prior to a final judgment, pursuant to the specific grounds listed under D.C. Code § 42-1207(h), it granted Captain Reed's motion and cancelled the notice of *lis pendens* despite Captain Reed's failure to cite to D.C. Code § 42-1207(h), its failure to provide any argument that the required factors under the statute had been satisfied, and its failure to provide any grounds upon which such a motion could be properly granted. App. 58. Instead, the Superior Court improperly granted Captain Reed's motion to cancel the *lis pendens* based on its decision to grant Captain Reed's motion to dismiss the claims in LDP Acquisitions' Complaint. App. 58-59.

In this appeal, therefore, LDP Acquisitions respectfully requests that the January 20, 2022 Omnibus Order of the Superior Court, as well as the contemporaneous cancellation of the notice of *lis pendens*, be reversed and vacated, that the notice of *lis pendens* be reinstated, that the matter be remanded for further proceedings on the merits of LDP Acquisitions' Complaint, and that LDP Acquisitions be granted such other and further relief as may be appropriate under the circumstances.

STATEMENT OF FACTS

A. Introduction.

LDP Acquisitions' extensive negotiations with Captain Reed took place over the better part of a year, between approximately October 2020 and July 2021, in which LDP Acquisitions invested considerable time, effort, and expense, at Captain Reed's inducement. Both Captain Reed and LDP Acquisitions committed, by enforceable contractual commitments in their letter of intent, to negotiate together in good faith to finalize a Purchase and Sale Agreement in accordance with the terms they agreed on. App. 27-35. They obligated themselves to negotiate in good faith and to reach a Purchase and Sale Agreement (App. 28), and were pursuing those efforts as of at least July 2021. Those undertakings necessarily mean that LDP Acquisitions' rights and interests have priority over other prospective purchasers, including Hanover. Captain Reed, as well, induced LDP Acquisitions to continue

in the negotiations, and to incur substantial related expense, through representations that the "only path forward" was a sale to LDP Acquisitions.

Hanover wanted to discourage Captain Reed from pursuing a sale to LDP Acquisitions, however, and to coerce Captain Reed to resuscitating Hanover's moribund negotiations that ceased before October 2020. Part and parcel of Hanover's improper and unlawful efforts was the baseless Prior Lawsuit. Hanover's actions to misuse the judicial system included making false allegations regarding its prior negotiations with Captain Reed, which falsities were revealed in internal Hanover communications produced in discovery in that Prior Lawsuit. By Order dated August 19, 2021, Hanover's groundless claims against LDP Acquisitions were dismissed with prejudice by the Superior Court (per the Honorable William M. Jackson). App. 37-40. By that time, though, Captain Reed had purported to terminate its exclusive No Shopping arrangement with LDP Acquisitions. The full extent of Hanover's role in these events has yet to be determined. Even without knowing all of that information, however, Captain Reed's liability to LDP Acquisitions is and was readily apparent.

Since August 2021, Captain Reed did not proceed to finalize a Purchase and Sale Agreement with LDP Acquisitions and refused to pursue the good faith negotiation of the agreed on terms. LDP Acquisitions therefore filed its lawsuit in

the Superior Court to enforce its legal and equitable rights, and to seek appropriate Court orders to protect its rights and interests.

This interlocutory appeal challenges the Superior Court's decision to grant the motions to dismiss and to cancel notice of *lis pendens* of Appellee/Cross-Appellant Captain Reed. The facts stated herein are based on the allegations in the Complaint. *See* App. 6-24. In the Superior Court, Appellant/Cross-Appellee LDP Acquisitions sought to enforce its rights, interests, and claims affecting title to, including asserting lien rights in, the Property owned by Captain Reed. *Id.* LDP Acquisitions undeniably continues to hold interests in the Property, despite the Superior Court's determination that dismissing the Complaint means "the case is no longer an action affecting the title to real property within the meaning of D.C. Code § 42-1207(a), and the Court should grant a motion to cancel and release the *lis pendens* notices." App. 58.

In addition to Captain Reed's failure to cite to D.C. Code § 42-1207(h) or any other valid grounds for cancellation of the notice *lis pendens*, the Superior Court's decision to cancel and release the notice also failed to consider LDP Acquisitions' continuing rights in and to the Property for an equitable lien and its statutory right, pursuant to D.C. Code § 42-1207(d)(1), which attaches the notice of *lis pendens* through appeal and this Court's issuance of a final judgment.

In these circumstances, this Court should vacate the Superior Court's Omnibus Order to dismiss LDP Acquisitions' claims, reverse the contemporaneous cancellation of the *lis pendens*, direct that the notice of *lis pendens* be reinstated, and grant LDP Acquisitions such other and further relief as may be appropriate under the circumstances.

B. <u>The Parties' Letter of Intent.</u>

Between October and at least July 2021, LDP Acquisitions engaged in extensive negotiations with Captain Reed to acquire the Property. App. 14. Captain Reed owns, in fee simple absolute, or otherwise controls the disposition of the nine lots comprising the Property. App. 9. At Captain Reed's encouragement, LDP Acquisitions also made significant efforts to obtain entitlements (including permission for specific uses) regarding the Property from local zoning and other District of Columbia officials. App. 9, 15, 23-24. These efforts, which were authorized expressly by Captain Reed, benefited the Property and Captain Reed by resulting directly in substantial enhancement of the Property's fair market value. *Id.*

In discussions between December 2020, when a letter of intent was signed between LDP Acquisitions and Captain Reed regarding a sale of the Property, and June 2021, LDP Acquisitions and Captain Reed agreed to negotiate exclusively with each other and in good faith to attempt to reach a final Purchase and Sale Agreement in accordance with the detailed terms they had been discussing, on which agreement

in principle was reached on the material terms of a sale. App. 14. By executing the letter of intent, LDP Acquisitions and Captain Reed were evidencing their mutual understanding and agreement to move forward to negotiate a Purchase and Sale Agreement. *Id.* The letter of intent did not have an integration clause. *See generally* App. 27-35.

As recently as June 28, 2021, Andrew Ross ("Mr. Ross"), an agent of Captain Reed, affirmed that there were no material issues remaining with regard to the draft Purchase and Sale Agreement between Captain Reed and LDP Acquisitions. App. 15-16. The sole reason the Purchase and Sale Agreement ultimately was not signed was that Captain Reed indicated that it wanted to wait until after September 10, 2021, when discovery closed in the Prior Lawsuit which was then pending in the Superior Court and related to the same Property involved in this case. App. 16. Captain Reed then broke off discussions and negotiations, avoiding completely its obligations, yet retained the fruits of LDP Acquisitions' work in gaining the entitlements. App. 17.

C. <u>The Prior Lawsuit Filed by Hanover.</u>

The Prior Lawsuit was filed by Hanover against Captain Reed and LDP Acquisitions and also involved the Property. Hanover's claim against LDP Acquisitions was one for tortious interference with contract, which was dismissed by this Court on the basis that there was no "valid binding contract between" Hanover and Captain Reed. App. 39-40. Two months later, Hanover and Captain

Reed agreed to a consent motion to dismiss the case. App. 86-87. LDP Acquisitions, however, having been dismissed months earlier, was not a party to the Prior Lawsuit at that time. Although Hanover claimed rights to the Property as part of the Prior Lawsuit, Hanover never made any such claim as to LDP Acquisitions and there was no allegation to the contrary.

D. Captain Reed's Motion to Dismiss.

On November 12, 2021, Captain Reed filed a motion to dismiss LDP Acquisitions' Complaint. App. 49. Captain Reed's motion was nothing more than an attempt to excuse itself from the performance to which it was obligated. In its motion, Captain Reed initially alleged that the letter of intent with LDP Acquisitions was just a "proposal and non-binding expression of interest under which no party would be obligated to proceed." Paradoxically, however, Captain Reed eventually admitted outright that an express contract existed between the parties and for that reason, LDP Acquisitions had no unjust enrichment claim.

LDP Acquisitions filed its opposition to Captain Reed's motion to dismiss on November 26, 2021. LDP Acquisitions reiterated the existence of a contract between the parties in their letter of intent. Additionally, LDP Acquisitions asserted that it had plausibly alleged the existence of a preliminary agreement which entitled it to seek specific performance. App. 19. LDP Acquisitions also disproved Captain

Reed's argument that declaratory judgment was not an independent cause of action and that it was entitled to an equitable lien as a remedy.

Despite Captain Reed's arguments and misplaced reliance on irrelevant case law, the Superior Court granted Captain Reed's motion to dismiss in its January 20, 2022 Omnibus Order. App. 47-59.

E. LDP Acquisitions' Notice of Pendency of Action.

On October 25, 2021, following Captain Reed's failure to continue its obligations under their letter of intent, LDP Acquisitions filed its notice of pendency of action to affect constructive notice to the world that it has equitable lien and other rights and interests in and affecting title to the Property (App. 66-72), an objective clearly encompassed within the plain language of the notice of *lis pendens* statute. D.C. Code § 42-1207(b). This statute authorizes and contemplates that a notice of pendency of action (*lis pendens*) can be filed under the circumstances and that the notice will remain in place until entry of final judgment in this case and determination on any appeal. D.C. Code § 42-1207(d). A party with an ownership interest in the affected real estate may file a motion seeking to cancel the notice. D.C. Code § 42-1207(g). The Superior Court has limited power to grant such a motion on the specific grounds stated in D.C. Code § 42-1207(h).

On November 19, 2021, Captain Reed filed a motion with the Superior Court to cancel the notice of *lis pendens*, but did not cite to D.C. Code § 42-1207(h), nor

provide any argument that any of the D.C. Code §§ 42-1207(h)(1)-(3) factors have been satisfied, nor proffer any grounds upon which such a motion could properly be granted. Instead, Captain Reed essentially sought summary judgment on the underlying claims, on the basis of *res judicata* and assertions that the claims do not affect the subject real estate – without complying with the Sup. Ct. Civ. Rule 56 requirements for such motions (including the statement of material facts not in genuine dispute required by Rule 56(b)(2)(A)) – and without meeting the required standards of proof of the lack of any genuine dispute on the material facts and entitlement to judgment, as a matter of law. Captain Reed based its *res judicata* argument on the notion that the outcome of the Prior Lawsuit, filed by Hanover somehow barred the Superior Court action and provided grounds to cancel the notice of *lis pendens*.

On December 3, 2021, LDP Acquisitions filed its opposition to Captain Reed's motion to cancel *lis pendens*. In its opposition, LDP Acquisitions argued that its notice of *lis pendens* was expressly authorized and contemplated by statute, D.C. Code § 42-1207. LDP Acquisitions also asserted that the doctrines of *lis pendens* and *res judicata* were inapplicable due to the specific limitations for cancellation of a notice of *lis pendens* provided by D.C. Code § 42-1207(h).

STANDARD OF REVIEW

This Court reviews an order granting a motion to dismiss *de novo*, applying the same standard the Superior Court was required to apply. *Hoff v. Wiley Rein*, LLP, 110 A.3d 561, 564 (D.C. 2015). This Court thus accepts the allegations in the Complaint as true, views all facts and draws all inferences in favor of LDP Acquisitions, and resolves all uncertainties in favor of LDP Acquisitions. *Id.* (citations omitted). The overriding inquiry is whether, viewing the Complaint as required, contains sufficient factual allegations, accepted as true, to state a claim for relief that is plausible. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-45 (D.C. 2011) (citations omitted).

Where, as here, the appeal also contains a request for review of issues of statutory interpretation, specifically regarding D.C. Code § 42-1207 and request to cancel the notice of *lis pendens* (App. 47), the Court also conducts a *de novo* review. *See, e.g.*, *Hubb v. State Farm Mut. Auto. Ins. Co.*, 85 A.3d 836, 839 (D.C. 2014).

SUMMARY OF THE ARGUMENT

The Superior Court granted, in part, Captain Reed's motion to dismiss the Complaint filed by LDP Acquisitions and, as a result, canceled and released the notice of *lis pendens*. D.C. Code § 42-1207(h) makes it abundantly and unambiguously clear that an order canceling the notice of *lis pendens* prior to the entry of judgment in the underlying action or proceeding may be issued only under

very specific circumstances. *See* D.C. Code § 42-1207(h)(1)-(3). By failing to consider whether Captain Reed's motion appropriately sought to cancel the notice of *lis pendens* under D.C. Code § 42-1207(h), the Superior Court's Order erroneously canceled and released the *lis pendens*. Additionally, D.C. Code § 42-1207(d)(1) establishes that where a judgment orders the cancellation and release of a notice of *lis pendens*, neither party shall record the judgment until after a final judgment has been entered by the appellate court. LDP Acquisitions and Captain Reed have both filed appeals in this case, both of which are currently pending. It is clear that no final judgment was been entered by this Court and that related issues are on appeal.

In these circumstances, this Court should reverse and vacate the Superior Court's Omnibus Order to dismiss LDP Acquisitions' claims, reverse the contemporaneous cancellation of the *lis pendens*, and grant LDP Acquisitions such other and further relief as may be appropriate under the circumstances.

ARGUMENT

I. The Superior Court's Cancellation of the Notice of *Lis Pendens* was Erroneous and did not Comport with the Applicable *Lis Pendens* Statute.

The central premise behind the Superior Court's decision to grant Captain Reed's motion to cancel the *lis pendens* was the fact that it had dismissed LDP Acquisitions' Complaint. App. 58-59. In its Order, the Court stated that dismissal

of the Complaint meant the case is no longer an action affecting the title to real property within the meaning of D.C. Code § 42-1207(a). *Id*. The Court's Order, however, fails to recognize D.C. Code § 42-1207(h). This section of the *lis pendens* statute details limited and specific grounds upon which this Court may issue an order canceling the notice of pendency prior to an entry of judgment in the action—none of which exist in this case. Specifically, D.C. Code § 42-1207(h) allows this Court to cancel a *lis pendens* prior to a final judgment being issued in the underlying case only if:

> (1) The notice does not conform to the requirements of subsection (b) of this section;
>
> (2)(A) The moving party will suffer an irreparable injury if the notice is not cancelled;
>
> (B) The moving party has demonstrated a substantial likelihood of success on the merits in the underlying action or proceeding;
>
> (C) A balancing of the potential harms favors the moving party; and
>
> (D) The public interest favors cancelling the notice; or
>
> (3) The underlying action or proceeding has not been prosecuted in good faith, with all reasonable diligence, and without unnecessary delay.
>
> D.C. Code § 42-1207(h).

In its motion, Captain Reed did not cite to, nor allege, any of the reasons listed in D.C. Code § 42-1207(h)(1)-(3). Captain Reed failed to even assert that one of these statutory provisions is applicable to the case at hand—instead, relying on

irrelevant arguments based in common law regarding the doctrines of *lis pendens* and *res judicata*. *See* 14 POWELL ON REAL PROPERTY § 82A-24 (2000) ("common law *lis pendens* … [has been] overruled by the passage of D.C. Code § 42-1207."). D.C. Code § 42-1207(h) governs the cancellation of a *lis pendens* prior to a final judgment being reached in the underlying lawsuit—Captain Reed's failure to even cite to that provision or to argue the required grounds to invoke it is sufficient to deem the Superior Court's Order granting Captain Reed's motion to cancel the *lis pendens* as improper. The provisions of D.C. Code § 42-1207(h) would be rendered meaningless if the Superior Court were simply to grant motions to cancel notice of *lis pendens* without requiring a party to properly establish a permissible reason for doing so.

Moreover, despite the Superior Court's statement implying the contrary (App. 58-59), D.C. Code § 42-1207(d) contemplates that a notice would remain in place even despite summary judgment or the granting of a motion to dismiss. Specifically, the statute says that in a case such as this one where an appeal from a judgment to cancel a notice of *lis pendens* has been taken, "neither party shall record the judgment until after the expiration of the latest of the following:

> (A) The time in which an appeal may be filed;
>
> (B) The time in which an appeal, which has been applied for, has been refused; or

(C) Final judgment has been entered by the appellate court from an appeal which was granted."

D.C. Code § 42-1207(d)(1).

Thus, the Superior Court's reasoning that it granted "Captain Reed's motion to cancel the *lis pendens* because it dismisse[d] LDP's claims" (App. 58) was wrong, as a matter of law.

II. The Superior Court's Cancellation of the Notice of *Lis Pendens* was Erroneous because LDP Acquisitions Continues to have Rights, Claims, and Interests in and to the Property.

Pursuant to D.C. Code § 42-1207(b), a notice of *lis pendens* "shall be effective only if the underlying action or proceeding directly affects the title to or tenancy interest in, or asserts a mortgage, lien, security interest, right of first offer, right of first refusal, or other ownership interest in real property situated in the District of Columbia…" D.C. Code § 42-1207(b). LDP Acquisitions has asserted at least two of these rights.

As D.C. Code § 42-1207(b) specifically contemplates the filing of a notice of *lis pendens* in an action asserting a lien on the Property, LDP Acquisitions' notice of *lis pendens*, which was filed in conjunction with its Superior Court action to protect LDP Acquisitions' equitable lien and other rights and interests in the Property, was proper. It enabled notice of LDP Acquisitions' claim, and was not an adjudication of the claim. *See Heck v. Adamson*, 941 A.2d 1028 (D.C. 2008)

(discussing *lis pendens* statute; finding that *lis pendens* filing was appropriate in connection with assertion of equitable interest in real estate and alleged constructive trust; reversing Superior Court and ordering that notice of *lis pendens* be reinstated, where the very narrow circumstances under which notice could be canceled were unfulfilled). Thus, allowing the cancellation and release of the notice of *lis pendens* to remain would result in Captain Reed becoming unjustly enriched, since it would be permitted to retain the benefits incurred at LDP Acquisitions' expense, in reliance upon Captain Reed's representations that it intended to convey the Property to LDP Acquisitions.

In circumstances such as those alleged in the Complaint, LDP Acquisitions is entitled to an equitable lien on the Property. *See, e.g.*, 20 Am. Jur. 2d Cotenancy and Joint Ownership § 72 (2022). The District of Columbia explicitly recognizes claims for equitable lien rights. *See OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 722 (D.C. 2011). Case law recognizes that one who has expended funds for the benefit of real property, such as LDP Acquisitions, can acquire related equitable lien rights. *HSBC Bank USA, N.A. v. Mendoza*, 11 A.3d 229, 235 (D.C. 2010) (citing *Eastern Savings Bank, FSB v. Pappas*, 829 A.2d 953, 955-60 (D.C. 2003)). *See also Martin v. Carter*, 400 A.2d 326, 329-330 (D.C. 1978). "Equity recognizes that where. . .. the intention to hold and charge a particular interest or estate as security for the payment of a debt or other obligation is clearly manifested in writing [here,

through the letter of intent and negotiations between LDP Acquisitions and Captain Reed], but frustrated simply through some default of form or in procedure, an equitable lien upon such interest or estate is created, which is enforceable against the property in the hands of . . . the original promisor . . ..." *See OneWest Bank, FSB*, 18 A.3d at 722. Part of the rationale for recognizing equitable lien rights in situations like this is to prevent forfeiture and unjust enrichment. *See Eastern Sav. Bank FSB,* 829 A.2d at 957. This is the rationale for recognizing that the Superior Court may grant equitable relief through equitable lien rights, to "significantly ameliorate this potential for prejudice." *See Martin*, 400 A.2d at 329. In this case, however, the Superior Court essentially decided the case and imposed a forfeiture at the pleadings stage and before a Scheduling Order had even been entered in the case and significant discovery had not taken place.

The statute expressly allows a notice of *lis pendens* regarding claims for equitable lien rights. *See* D.C. Code § 42-1207(b) (permitting the filing of a notice of *lis pendens* where "the underlying action or proceeding directly affects the title to or tenancy interest in, or asserts a mortgage, lien, security interest, right of first offer, right of first refusal, or other ownership interest in real property situated in the District of Columbia . . . ."). This Court has confirmed that the lien rights for which a notice is permitted explicitly include equitable lien rights. *Heck*, 941 A.2d at 1029-30. The notice stays in place pending the adjudication and any appeal of the related

rights, interests, and claims, D.C. Code § 42-1207(d), and the validity of the notice does not involve consideration on the merits of the claims and any potential defenses. *See Bloom v. Beam*, 99 A.3d 263, 267 (D.C. 2014) (citing *McAteer*, 908 A.2d at 1170). Yet the Superior Court decided that because, in its view, the claims affecting title were not plausible, the notice was to be canceled immediately. App. 58-59. This compounded the error of short-circuiting the resolution of the claims on the merits, but also violated the *lis pendens* statutory scheme, as LDP Acquisitions had the right to maintain its notice through resolution of the claims and any related appeals.[1]

D.C. Code § 42-1207(b) also specifically contemplates the filing of a notice of *lis pendens* in analogous situations involving rights of first offer. LDP Acquisitions alleged that Captain Reed agreed that it would negotiate exclusively with LDP Acquisitions as part of the effort to reach a final Purchase and Sale Agreement, and that Captain Reed would not discuss, consider, solicit, or encourage

[1] There are cases in which immediate cancellation of a notice of lis pendens has been upheld, but they are not on similar footing to the case at bar. For example, *Martin v. Santorini Capital, LLC*, 236 A.3d 386, 395-400 (D.C. 2020) involved claims that were dismissed for lack of standing, such that the plaintiff (an individual) purported to assert real property rights and claims on behalf of several limited liability companies; and *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 510 (D.C. 2009) involved a notice of mechanic's lien that partly named the wrong property owner and partly misdescribed the affected real property, and was therefore void. There was no claim of lack of standing in this case, or a basis for such an assertion or for a claim that the asserted rights were void.

any proposal or offer from any other potential purchaser. App. 10. Such an agreement is like a right of first offer, which gives the party holding the right the ability to negotiate to acquire the affected real estate. Such a party has "an opportunity to purchase property before it is sold to a third party." *See EastBanc, Inc. v. Georgetown Park Assocs. II, L.P.*, 940 A.2d 996, 999 (D.C. 2008). The statute allows such a party to protect that opportunity by filing an appropriate notice. D.C. Code § 42-1207(b). By the same rationale that the holder of a right of first offer, which is a potential opportunity to purchase real estate, is entitled to invoke the *lis pendens* statute, LDP Acquisitions' notice of *lis pendens*, filed in conjunction with this action to protect LDP Acquisitions' rights in the Property, was proper. Thus, this Court should reverse the cancellation of the notice of *lis pendens* and order that LDP Acquisitions' notice be reinstated through the appeal and final judgment in this case.

III. LDP Acquisitions is Entitled to Pursue its Claim on the Merits for Declaratory Judgment, and to seek Specific Performance of the Contract with Captain Reed.

The Superior Court's finding that the letter of intent between Captain Reed and LDP Acquisitions is not enforceable through specific performance or declaratory judgment because it is a Type II preliminary commitment is erroneous and should be reversed. In its Omnibus Order, the Court stated that the "non-binding expression of interest in the Letter of Intent does not give LDP a right to buy the

Property or any interest in the property, whether legal or equitable; only an executed purchase agreement could do that." App. 53. Further, the Court stated that a Type II preliminary commitment does not give a party the right to demand performance of the transaction even if no final agreement was reached. App. 54. LDP Acquisitions, however, does not seek specific performance of the "transaction," otherwise known as the sale of the Property. App. 19-20.

The letter of intent between the parties is a preliminary agreement that required the parties to negotiate in good faith toward the execution of a definitive agreement for the purchase and sale of the Property. App. 27-35. This Court has previously established that preliminary agreements of this nature do not obligate the sale contemplated in the agreement, but it does obligate the parties "to negotiate the open issues in good faith in an attempt to reach the alternative [i.e., ultimate] objective within the agreed framework." *Stanford Hotels Corp. v. Potomac Creek Assocs., L.P.*, 18 A.3d 725, 735-36 (D.C. 2011).

In the case at hand, regardless of any theoretical possibility that the negotiations might fail, the obligation to negotiate barred Captain Reed from renouncing the deal, abandoning the negotiations, or insisting on conditions that do not conform to the preliminary agreement. *See United House of Prayer for All People v. Therrien Waddell, Inc.*, 112 A.3d 330, 345 (D.C. 2015). Thus, LDP

Acquisitions was undeniably entitled to seek specific performance of Captain Reed's obligations under the parties' letter of intent.

Judge Epstein held to the contrary, that the letter of intent "is not enforceable through specific performance because it is a Type II preliminary commitment that does not give a party the right to demand performance of the transaction even if no final agreement was reached." App. 54. He cited both *United House of Prayer* and *Stanford Hotels* in support of that determination. *Id.* The principle stated by the Superior Court, though, is not the law.

A Type II preliminary commitment of the type plausibly alleged by LDP Acquisitions is one that commits the parties "to 'the obligation to negotiate the open issues in good faith in an attempt to reach the alternative [*i.e.*, ultimate] objective within the agreed framework.'" *Stanford Hotels*, 18 A.3d at 736 (quoting *Teachers Ins. & Annuity Assoc. v. Tribune Co.*, 670 F.Supp. 491, 498 (S.D.N.Y. 1987) (interlineation added by this Court in *Stanford Hotels*)). There is no law stating that such an obligation to negotiate cannot be enforced through specific performance, and no reason why the law would deny such a remedy in the right circumstances. *United House of Prayer* indicates the direct opposite: "Had Judge Rankin found that UHP breached the parties' preliminary agreement through bad-faith refusal to negotiate, and had the matter been before him for a decision before the Project had been completed, TWI might have been entitled only to specific performance: an

order that UHP negotiate in good faith." 112 A.3d at 345 (citing *Stanford Hotels*, 18 A.3d at 739 and *Brown v. Cara*, 420 F.3d 148, 151 (2d Cir. 2005)). An order for specific performance that there be such good faith negotiations was precisely what LDP Acquisitions prayed for in its Complaint. App. 19-20.

In addition, LDP Acquisitions remained at all times ready, willing, and able to perform its contractual obligations to negotiate in good faith. App. 19. "When land is the subject matter of the agreement, the legal remedy is assumed to be inadequate, since each parcel of land is unique." *Indep. Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 870 (D.C. 2005). To be entitled to seek specific performance, a party "must show that he was ready, willing and able to perform" the contractual obligations. *Id.* As stated in the Complaint, LDP Acquisitions was at all times, and continues to be, ready, willing, and able to proceed with good faith negotiations for a Purchase and Sale Agreement regarding the valuable Property. App. 19. Thus, LDP Acquisitions' request for specific performance is grounded securely in the applicable law.

As well, an action for a declaratory judgment may be employed to determine contractual rights and obligations. *See Bd. of Trustees Grand Lodge of Indep. Ord. of Odd Fellows of D.C. v. Carmine's DC, LLC*, 225 A.3d 737, 747 (D.C. 2020) (citing *McIntosh v. Washington*, 395 A.2d 744, 749 (D.C. 1978)) (upholding "the Superior Court's authority to award declaratory judgments in cases within [its]

jurisdiction"); *see also Spock v. District of Columbia*, 283 A.2d 14, 20 n.16 (D.C. 1971) (the "Federal Rules of Civil Procedure, including Rule 57, the Declaratory Judgment Rule, and 28 U.S.C. § 2201 (1970) incorporated therein, [are] applicable to the Superior Court"). *See also* 26 C.J.S. Declaratory Judgments § 60 (2022) ("An action or proceeding for a declaratory judgment may be appropriate for the purpose of determining a present controversy with respect to the construction, effect, or validity of a contract; such an action also may be employed to determine contractual rights and obligations"). This case plainly presents disputed rights, claims, and remedies, and it is therefore appropriate to seek a declaratory judgment to resolve the controversy and clarify the rights of the parties going forward. LDP Acquisitions sought a judgment declaring that Captain Reed's obligations include the requirement that it negotiate in good faith towards a Purchase and Sale Agreement with LDP Acquisitions. It expressly sought a declaratory judgment from the Court "to resolve the underlying controversy and determine the legal rights and legal relationships of the Parties." App. 18. Accordingly, the Superior Court's Order dismissing LDP Acquisitions' claims was erroneous and should be vacated.

IV. The Superior Court Erred in Dismissing LDP Acquisitions' Fraud Claim.

Moreover, the Superior Court's ruling that LDP Acquisitions did not state a plausible claim of fraud was erroneous and should be reversed. The Court's Omnibus Order stated that LDP Acquisitions' allegation that "Captain Reed

fraudulently represented that the only path forward was the sale of the property to LDP and that it was committed to a sale of the property to LDP" did not support a fraud claim. App. 56-57. The central premise for the Court's decision was that "the mere breach of the alleged promise" did not support a plausible inference of fraudulent intent. *See id.* The Court's narrow focus on this element of a fraud claim is improper however.

LDP Acquisitions sufficiently pleaded all the required elements of a fraud claim in its Complaint. This Court has held on numerous occasions that there are five specific elements to a viable fraud claim: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; and (5) action taken in reliance upon the misrepresentation. *See, e.g.*, *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977), *cert. denied*, 434 U.S. 1034 (1978).

LDP Acquisitions alleged facts to support each and every one of the required elements. Facts were alleged showing false representations, namely: Mr. Ross's statements on June 28, 2021 that there were no material issues remaining with regard to the draft Purchase and Sale Agreement, that Captain Reed was concerned that an executed Purchase and Sale Agreement would serve as a guidepost to Hanover and have the effect of extracting more time, money, and effort in the ongoing Prior Lawsuit, that LDP Acquisitions was asked to agree that the best strategy was to hold off executing the Purchase and Sale Agreement until after the discovery period in

the Prior Lawsuit (which expired on or about September 10, 2021), and that a Purchase and Sale Agreement would be executed shortly thereafter. These allegations were contained in ¶ 41 of the Complaint. App. 15-16. LDP Acquisitions also alleged statements by Captain Reed's authorized agents, Jack Sarf and Mr. Ross, that "the only path forward was a sale to LDP Acquisitions, and that Captain Reed was prepared to sign a Purchase and Sale Agreement after discovery closed in the Prior Lawsuit." These allegations were contained in ¶ 72 of the Complaint. App. 21. Other allegations supporting plausible claims of false representations were set forth in ¶¶ 35-36, 38, 41, 50, 72-73 of the Complaint. App. 14-17, 21.

All of the allegations related to material facts, regarding the sale of the Property to LDP Acquisitions and the Prior Lawsuit as it was ongoing. These allegations were contained in ¶¶ 38, 74-75, and 77 of the Complaint. App. 15, 21-22. LDP Acquisitions alleged that the misrepresentations were made with knowledge of their falsity, in ¶¶ 72 and 76 of the Complaint. App. 21-22. LDP Acquisitions alleged that the misrepresentations were made with intent to deceive, in ¶¶ 74 and 78 of the Complaint. App. 21-22. LDP Acquisitions alleged that it took action in reliance on the representations, in ¶¶ 38, 74-75, 77, and 79-81 of the Complaint. App. 15, 21-23. These were amply plausible allegations to support the fraud claim.

It is eminently plausible that LDP Acquisitions was lulled into waiting to sign a Purchase and Sale Agreement by the promises from Captain Reed that although it did not want to sign the document at the time (because of the ongoing Prior Lawsuit), it would do so because this was "the only path forward." *See* App. 6-8, 15, 21-22. In context, it is perfectly plausible that, based on Captain Reed's representations that "the only path forward" was a sale to LDP Acquisitions and that it was prepared to sign a Purchase and Sale Agreement after discovery closed in the Prior Lawsuit, LDP Acquisitions made improvements to and conferred benefits on the Property which amounted to expenditures incurred in the millions of dollars. App. 23-24. Captain Reed accepted and encouraged LDP Acquisitions to provide these benefits, despite that it apparently had no intent to actually sell the Property to LDP Acquisitions. App. 6-8, 15. The factual allegations underpinning the fraud claim were amply sufficient to survive dismissal, particularly since Sup. Ct. Civ. Rule 9(b) permits that malice, intent, knowledge, and other conditions of a person's mind "may be alleged generally."

In finding otherwise, Judge Epstein focused narrowly on Captain Reed's false representation that the sale of the Property to LDP Acquisitions was "the only path forward," and he found that "the only factual allegation relating to the truth or falsity of the statement is that Captain Reed did not sell the property to LDP, and the mere breach of the alleged promise does not support a plausible inference of fraudulent

intent." App. 56-57. This was a misapplication of the law and the pleading standards. Not only does Sup. Ct. Civ. Rule 9(b) expressly not require additional plausible facts to support a claim of intent to deceive, because it explicitly allows such intent to be "alleged generally," but there were other facts setting forth plausible allegations of intent to deceive.

Judge Epstein cited *Va. Acad. Of Clinical Psychologists v. Group Hospitalization & Med. Servs.*, 878 A.2d 1226, 1234 (D.C. 2005) (a case involving review of a grant of summary judgment on a fraud claim, not a motion to dismiss), in support of the ruling. App. 57. It appears that the citation was based on the determination that the only basis for LDP Acquisitions' fraud claim was an assertion that at the time of the misrepresentations, Captain Reed intended to follow through with a Property sale, but then did not do so. *See* App. 56-57. The Superior Court saw this as an effort to turn a breach of contract into a fraud claim, without facts sufficient to show a present intention not to perform. *See id.*

This was a misapprehension of the full scope of the fraud claim. The issues were not just whether Captain Reed negotiated in good faith or whether Captain Reed ever had an intention to sell the Property to LDP Acquisitions (as Captain Reed promised) when the letter of intent dated May 1, 2021, but they also encompassed Captain Reed's actions urging a delay in moving forward until discovery closed in the Prior Lawsuit on September 10, 2021. Captain Reed's false representations to

induce such delay were intended to lull LDP Acquisitions into inaction in the ensuing months. Also, Captain Reed intended to obtain and keep the benefit of the services rendered, time and expense incurred, and funds expended by LDP Acquisitions in benefiting and enhancing the fair market value of the Property. *See R & A, Inc. v. Kozy Korner*, 672 A.2d 1062, 1067 (D.C. 1996) (reversing grant of directed verdict on fraud claim in light of evidence from which jury could reasonably have concluded that defendant fraudulently misrepresented his intentions to sell restaurant and plaintiff paid money in reliance on such misrepresentation).

Not only did the Superior Court misconstrue the claim, but the concerns it relied on in dismissing the fraud claim would dictate that a failure to follow through on a promise cannot give rise to a claim of fraud. *See* App. 56-57. This is not our law. *Va. Acad. Of Clinical Psychologists*, 878 A.2d at 1234 ("The question then initially arises whether the breach of a contractual promise can ever be the subject of the tort of fraudulent misrepresentation. We have held that it can."). At best, Judge Epstein seemed to be identifying an affirmative defense that Captain Reed might have raised in answer to the fraud claim,[2] which is not a proper basis for dismissal. Under similar circumstances, this Court reversed a grant of summary

[2] Captain Reed filed an Answer on February 3, 2022 but chose to take the position that the Omnibus Order had obviated the need to respond in detail to most allegations, including the fraud claim, and simply denied the allegations generally without raising the issue relied on by the Superior Court to dismiss the fraud claim.

judgment on a fraud claim where the relevant issues involved triable factual disputes as to whether the plaintiff was defrauded about the content and significance of loan documents she signed. *See Archie v. U.S. Bank, N.A.*, 255 A.3d 1005, 1017-18 (D.C. 2021).

In addition, the Superior Court's ruling appears to rest on the letter of intent and what Judge Epstein found was its lack of an obligation to sell the Property to LDP Acquisitions. *See* App. 27-35 and 56-57. The letter of intent itself, however, did not indicate that it was a fully integrated document or the full iteration of the terms of the arrangement between LDP Acquisitions and Captain Reed. *See Bolle v. Hume*, 619 A.2d 1192, 1195 (D.C. 1993) (explaining that a fully-integrated contract is one in which "the parties intended the written contract to settle everything"). The letter of intent did not contain an integration clause or other indication that LDP Acquisitions intended it to be fully-integrated, which would be significant proof that they did not hold such an intent. *See id.*, 619 A.2d at 1195-96 (noting that "the four corners of the document in question" provides significant guidance on such questions). The letter of intent itself expressly contemplates further discussions and negotiations of additional documents. *See* App. 27-35. The letter of intent did not limit the parties' rights or rule out a possible claim for fraud if the Property were not sold to LDP Acquisitions.

Setting forth a hard and fast rule barring a fraud claim in the context of such a transaction also goes further than our law has ever gone, and consigns plausible claims to dismissal based on the Superior Court's interpretation at the pleading stage of a preliminary agreement and notwithstanding the governing review standards on a motion to dismiss. The Superior Court's Order dismissing LDP Acquisitions' fraud claim was erroneous and should be reversed and vacated.

V. The Superior Court Erred in Dismissing LDP Acquisitions' Claim for Quantum Meruit/Unjust Enrichment.

Judge Epstein also dismissed the claim for Quantum Meruit/Unjust Enrichment in Count V of the Complaint. App. 54-55. He did so based on the determination that there was an express contract governing the claim, given the reference to "predevelopment activities" in Section 12 of the letter of intent. *Id.* Based on that reference, the Superior Court found that LDP Acquisitions could not seek to recover in quantum meruit/unjust enrichment because it had contracted away any such right: "Section 12 provides that Captain Reed will reimburse LDP for 'predevelopment activities' only if Captain Reed enters into an agreement with another purchaser during the 'no shop' period, and LDP does not allege that Captain Reed did so during the 'no shop' period." App. 55. Thus, it was held, "LDP undertook these efforts at its own risk before it had a binding agreement to purchase the property." *See id.*

This ruling impermissibly made several factual determinations in favor of Captain Reed, notwithstanding the requirements for taking the Complaint's factual allegations as true and giving LDP Acquisitions the benefit of all favorable inferences. The Superior Court found that the term "predevelopment activities" necessarily encompassed LDP Acquisitions' efforts that enhanced the fair market value of the Property. *See* App. 55-56. This finding was made despite the fact that the letter of intent does not define the term "predevelopment activities" or otherwise indicate unambiguously that they would apply to the actions in question. App. 27-35. The letter of intent did not indicate that "predevelopment activities" included, for example, permission for specific uses and zoning approvals, which is what LDP Acquisitions worked to obtain. App. 31-32. The Superior Court's finding that LDP Acquisitions acted "at its own risk" was a further factual determination that, at the very least, involves disputed issues that would need discovery and a review on the merits to decide.

The edict that the Superior Court made also disregarded and failed to treat as true several factual allegations made expressly in the Complaint. Paragraph 83 of the Complaint alleged that: "With respect to the entitlements obtained by LDP Acquisitions regarding the Property from local zoning and other District of Columbia officials, with Captain Reed's authorization and approval, Captain Reed was on notice that it was receiving valuable services from LDP Acquisitions,

Captain Reed accepted those services knowing that they were valuable and were being performed on behalf of Captain Reed, Captain Reed knew that LDP Acquisitions was not providing its services gratuitously and that LDP Acquisitions expected to receive the full benefit of those services (including the appreciation in fair market value to the Property), and because Captain Reed accepted these services and benefited therefrom, Captain Reed impliedly promised to pay a reasonable amount for the services rendered by LDP Acquisitions." App. 23. LDP Acquisitions also alleged in Paragraph 39 of the Complaint that Captain Reed also explicitly agreed to have LDP Acquisitions seek entitlements regarding the Property. App. 15. These allegations had to be taken as true, not simply disregarded or adjudged, merely at the pleading stage, to be unproven.

District of Columbia law gives a broad right to seek damages for quantum meruit/unjust enrichment, under circumstances where it is fair for the defendant to pay for benefits conferred by the plaintiff. *See Peart v. D.C. Hous. Auth.*, 972 A.2d 810, 814 (D.C. 2009). Issues central to the claim include whether, under the circumstances, it is fair and just for the recipient to retain the benefit. *See id.* Where justice and equity do not support the retention, a claim will lie. *See 4934, Inc. v. District of Columbia Dep't of Employment Servs.,* 605 A.2d 50, 55-56 (D.C. 1992).

The fact that the parties did not negotiate a Purchase and Sale Agreement, because Captain Reed shirked its obligation to do so, does not negate the right to

pursue these claims. *See United House of Prayer*, 112 A.3d at 340 ("where the parties have a Type II preliminary agreement to negotiate in good faith, and . . . the parties would have reached an agreement but for the defendant's bad faith negotiations, the plaintiff is entitled to recover contract expectation damages").

On a motion to dismiss, it was improper for the Superior Court to essentially decide the competing facts and determine, as a matter of law, that LDP Acquisitions had expressly given up any right to pursue the quantum meruit/unjust enrichment claim.

CONCLUSION

For the reasons stated above, Appellant and Cross-Appellee LDP Acquisitions respectfully requests: (i) that the Superior Court's January 20, 2022 Omnibus Order granting Captain Reed's motion to dismiss be reversed and vacated; (ii) that the decision to cancel the notice of *lis pendens* be reversed and that the notice of *lis pendens* be reinstated; and (iii) that Appellant/Cross-Appellee be granted such other and further relief as may be appropriate under the circumstances.

Respectfully submitted this 20th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief for Appellant and Cross-Appellee LDP Acquisitions, LLC was mailed, first-class postage prepaid, to Counsel named below on this 20th day of July, 2022, addressed as shown below:

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Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

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

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

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

Signature

22-cv-62 & 22-cv-97
Case Number(s)

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07/20/2022
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