No. 17-CV-681

DISTRICT OF COLUMBIA COURT OF APPEALS

MARGARET WILLIAMS et al.,

Appellants,

v.

JAMES C. KENNEDY et al.,

Appellees.

ON APPEAL FROM A FINAL JUDGMENT OF
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF OF *AMICUS CURIAE* THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA IN SUPPORT OF APPELLANTS

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INTEREST OF *AMICUS CURIAE*

The Legal Aid Society of the District of Columbia was formed in 1932 to provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs. Legal Aid is the oldest and largest general civil legal services provider in the District of Columbia. Since its inception, Legal Aid has represented numerous tenants living in poverty in the District and participated as *amicus curiae* in many appeals involving landlord-tenant matters in general and TOPA in particular, including in *Burkhardt v. District of Columbia Rental Housing Commission*, Nos. 15-AA-1243 & -1244 (D.C.) (oral argument held April 5, 2018); *Parcel One Phase One Associates, LLP v. Museum Square Tenants Association*, 146 A.3d 394 (D.C. 2016); *Richman Towers Tenants' Association v. Richman Towers LLC*, 17 A.3d 590 (D.C. 2011), and *Gomez v. Independence Management of Delaware, Inc.*, 967 A.2d 1276 (D.C. 2009).

By order dated May 17, 2018, this Court invited Legal Aid to submit an *amicus curiae* brief addressing whether it is a sale under TOPA for one co-owner who has a majority interest in a property to transfer some or all of that interest to another co-owner who thereby ends up with a majority interest in the property.

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INTRODUCTION AND SUMMARY OF ARGUMENT

By order dated May 17, 2018, this Court invited Legal Aid to address the following legal question: "whether it is a sale under the Tenant Opportunity to Purchase Act ('TOPA'), D.C. Code § 42-3404.01 *et seq.* (2012 Repl. & 2017 Supp.), for one co-owner who has a majority interest in a property to transfer some or all of that interest to another co-owner who thereby ends up with a majority interest in the

property."[1] Such a transfer is a sale under TOPA. First, TOPA expressly provides that a sale includes a transaction in which the owner relinquishes possession of the property, which occurs when there is a change in fundamental control of ownership. The transition from one majority co-owner to a different majority co-owner is such a change in fundamental control of ownership. Second, the purposes of TOPA are served by this understanding of the statutory language. TOPA gives tenants specified rights upon a contemplated "sale" primarily for two reasons: (1) a sale is a transaction that raises the likelihood of the tenant harms TOPA was intended to mitigate, including increased rent and displacement, and (2) by offering to give up ownership rights through a sale, the owner demonstrates an attenuated interest in the property and a willingness to part with that interest. The transaction at issue here has these same characteristics and therefore is a "sale" under the statute. Given the long history of landlord attempts to evade TOPA, a contrary ruling here would create a loophole that would inevitably be exploited and could eviscerate TOPA.

[1] This brief attempts to answer the legal question presented in the Court's May 17, 2018 order. It does not address other issues raised in this appeal, including claims regarding procedural default and the dispute regarding whether the transactions at issue were for consideration.

ARGUMENT

I. UNDER TOPA'S EXPRESSED DEFINITIONS OF "SALE," A TRANSFER CREATING A NEW MAJORITY OWNER CONSTITUTES A SALE.

A. Statutory Language

TOPA contains two definitions of "sale." The first states that:

> [T]he terms "sell" or "sale" include, but are not limited to, the execution of any agreement pursuant to which the owner of the housing accommodation agrees to some, but not all, of the following:
>
> (1) Relinquishes possession of the property;
>
> (2) Extends an option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance and provides that a portion of the payments received pursuant to the agreement is to be applied to the purchase price;
>
> (3) Assigns all rights and interests in all contracts that relate to the property;
>
> (4) Requires that the costs of all taxes and other government charges assessed and levied against the property during the term of the agreement are to be paid by the lessee either directly or through a surcharge paid to the owner;
>
> (5) Extends an option to purchase an ownership interest in the property, which may be exercised at any time after execution of the agreement but shall be exercised before the expiration of the agreement; and
>
> (6) Requires the assignee or lessee to maintain personal injury and property damage liability insurance on the property that names the owner as the additional insured.

D.C. Code § 42-3404.02(b). The second statutory definition of "sale" provides that "the term 'sell' or 'sale' shall include . . . [t]he transfer of an ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns an accommodation as its sole or principal asset, which, in effect, results in the transfer of the accommodation pursuant to [D.C. Code § 42-3404.02(a)]." D.C. Code § 42-3404.02(c)(1).[2]

Under these definitions, the scenario presented here – in which one co-owner who has a majority interest in a property[3] transfers some or all of that interest to

[2] A transfer that would otherwise constitute a sale under either of these provisions is not a sale if it falls within one of the exceptions enumerated in D.C. Code § 42-3404.02(c)(2), which exempts certain transfers among family members and transfers related to foreclosures and tax sales. While this brief explains the general rule that a transfer that changes the identity of the majority co-owner is a sale under TOPA, it does not address the specific circumstances under which such a transfer might also fall under one or more of the exceptions enumerated in D.C. Code § 42-3404.02(c)(2) and might therefore not be a TOPA sale. For example, if the parties to such a transfer were spouses, the transfer might not constitute a TOPA sale under D.C. Code § 42-3404.02(c)(2)(B).

[3] To Legal Aid's knowledge, the phrase used by the Court here – "co-owner who has a majority interest in a property" – is not a defined term under TOPA or otherwise, and it is therefore not entirely clear what that phrase means. For purposes of this brief, we assume that "majority interest" means "controlling interest," and therefore includes the ability to make important decisions about the property. *See*, *e.g.*, *In re Dickens*, 174 A.3d 283, 302 (D.C. 2017) (referring to the "majority owner (52%)" of a partnership as possessing a "controlling interest" in that partnership). This interpretation appears to fit the facts of the case before the Court, in which the property was allegedly owned by a partnership whose agreement provides that, in the absence of consensus, "the majority will rule." Appellants' Appendix 46.

another co-owner who thereby ends up with a majority interest in the property – constitutes a "sale" under TOPA. The phrase "[r]elinquishes possession" as used here applies to the relinquishment of any possessory interest, including a majority co-ownership. To the extent that phrase by itself is considered ambiguous, the legislative history and this Court's decisions demonstrate that it includes transfers like this one, even when they involve less than a 100% possessory interest.

Moreover, the Council expressly provided that any ambiguity in the language of TOPA must be resolved in a manner that benefits tenants. *See* D.C. Code § 42-3405.11 ("The purposes of this chapter favor resolution of ambiguity [in TOPA] by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent possible under law."). In general, it benefits tenants for a transaction to be a TOPA "sale," because the existence of such a sale triggers tenant rights. Therefore, any ambiguity in TOPA's definition of "sale" in general, and in the phrase "[r]elinquishes possession," in particular, must be resolved in a manner that increases the type and number of transfers that constitute sales and therefore confer rights on tenants.

B. This Court's Interpretation of the Statutory Language

In *Columbia Plaza Tenants' Association v. Columbia Plaza LP*, 869 A.2d 329, 334 (D.C. 2005), this Court addressed whether a transaction in which an entity acquired from existing partners approximately 28.6% of a partnership that owned

the relevant property constituted a TOPA sale. In discussing that question (and ultimately determining that the transaction was *not* a sale),[4] this Court did not suggest that only a transfer of a 100% possessory interest can be a TOPA sale. Instead, this Court looked to the legislative history, which indicates that "the legislature envisioned the critical concept, in assessing whether an owner had 'relinquishe[d] possession of the property,' to be 'change in fundamental control of ownership.'" *Id.* at 336 (quoting D.C. Code § 42-3404.02(b)(1) and Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Committee Report on Bill 11-53, the "Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995," at 10 (March 14, 1995)). This makes sense because TOPA is meant to be a practical statute and was not intended to create formalistic loopholes. *See*, *e.g.*, *Richman Towers Tenants' Association v. Richman Towers LLC*, 17 A.3d 590, 607 n.16 (D.C. 2011) (suggesting that even now-repealed provision referring to transfer of 100% interest would be met if "a percentage nominally less than 100% becomes 100% in substance though not in form"). Whether a change in fundamental control of ownership has taken place is a practical

[4] It is not clear whether the holding of *Columbia Plaza* remains good law today in light of the intervening amendment of D.C. Code § 42-3404.02(c)(1)(B)(i) to eliminate the requirement of transfer of a 100% interest in a partnership or corporation to constitute a TOPA sale in that context.

measure of whether an ownership transfer that is meaningful to landlords and tenants in the real world has taken place.

The *Columbia Plaza* opinion provides further details on what "fundamental control of ownership" means. The transaction in that case did not change the fundamental control of ownership (and therefore was not a TOPA sale) because the purchaser ended up with "substantially less than a 51% interest in the Partnership" and because, as a result of that acquisition, the purchaser did not control "equipment, supplies, permits, payment of taxes, maintenance and repairs, and liability insurance" and lacked "responsibility for managing or operating the apartment complex, or executing a lease . . . or for security at the premises or landlord and tenant actions and evictions." 869 A.2d at 336.

By contrast, the hypothetical transfer with respect to which this Court requested supplemental (and *amicus*) briefing – in which one co-owner who has a majority interest in a property transfers some or all of that interest to another co-owner who thereby ends up with a majority interest in the property – involves the acquisition of a *majority* ownership interest. And while the hypothetical posed by this Court does not speak directly to specific rights and responsibilities of ownership described in *Columbia Plaza*, it is logical to assume that a "co-owner who has a majority interest in a property" has those rights and responsibilities and that a transfer that changes majority co-ownership is a change in fundamental control of

ownership and is therefore a TOPA sale. This is because a majority owner is typically a controlling owner. *See* D.C. Code § 29-604.01(l) ("A difference arising as to a matter in the ordinary course of business of a partnership shall be decided by a majority of the partners."); *see also* Appellants' Appendix 47 (absent consensus, "the majority will rule" in the specific partnership agreement in the record of this case). Thus, a change in the identity of the majority co-owner would represent a change in control over the functions referenced in *Columbia Plaza* and is therefore a TOPA sale.[5]

C. Statutory Context

The interpretation of the phrase "relinquishes possession of the property" in § 42-3404.02(b)(1) to encompass the transfer at issue here is bolstered by other TOPA provisions. *See National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666 (2007) ("[A] reviewing court should not confine itself to examining a particular statutory provision in isolation. Rather, [t]he meaning – or ambiguity – of

[5] For this reason, *Wallasey Tenants Association Inc. v. Varner*, 892 A.2d 1135 (D.C. 2006), relied upon by the owners here, is inapposite. The "true nature" of the transfer at issue in *Wallasey* was not a sale because it was a transfer in form only, from an individual owner to a limited liability corporation *wholly owned by that same individual*. *Id.* at 1141. The transaction in *Wallasey* did not trigger TOPA rights because it did "not result in a change of ownership or *control*," *id.* at 1140 (emphasis added), as the same individual remained in control of the property, just in a different form. Here, by contrast, the transfer at issue would change the control of the property from the current majority owner to a new majority owner – a substantive change in the identity of the entity owning *and* controlling the property.

certain words or phrases may only become evident when placed in context.") (internal quotation marks and citation omitted). For example, the Legislature amended § 42-3404.02(c)(1)(B)(i), which had previously been expressly limited to the sale of 100% of a partnership or corporation that owned property, so that it now applies to any transfer of "an ownership interest" in such an entity. *Compare* D.C. Code § 42-3404.02(c)(1)(B)(i) (transfer of "an ownership interest" in a partnership or corporation owning a property is a TOPA sale), *with* D.C. Law 11-31, the "Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995," at 4 (Sept. 6, 1995) (available at https://code.dccouncil.us/dc/council/laws/docs/11-31.pdf) (prior to amendment, "the transfer of 100% of all partnership interests in a partnership which owns the accommodation as its sole asset . . . or of 100% of all stock of a corporation which owns the accommodation as its sole asset" was a TOPA sale). Use of the phrase "an ownership interest" rather than "100%" demonstrates that transfers of less than complete ownership interests can constitute sales under TOPA, something this Court indicated was true even before the amendment. *See Richman Towers*, 17 A.3d at 607 n.16.

II. TO SERVE ITS PURPOSES, TOPA'S DEFINITION OF "SALE" MUST BE INTERPRETED TO AVOID LOOPHOLES.

TOPA has four stated purposes relating to sale (rather than conversion) of rental property:

> [a] To discourage the displacement of tenants through . . . sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
>
> [b] To preserve rental housing which can be afforded by lower income tenants in the District; . . .
>
> [c] To encourage the formation of tenant organizations; [and]
>
> [d] To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement.

D.C. Code § 42-3401.02(1), (2), (6), (6a). In sum, TOPA gives tenants a rare moment of opportunity to purchase their homes, leverage to help ensure that a new landlord will provide safe and affordable housing, limited ability to select among potential new landlords, and the right to take advantage of certain economic opportunities not capitalized upon by the existing landlord. TOPA gives power to the least powerful and benefits the District as a whole by preserving and protecting safe and affordable housing. All of these important purposes and goals are furthered by TOPA's defining a "sale" to encompass the transfer of majority ownership.

As an initial matter, TOPA's definition of "sale" demonstrates the Legislature's commitment to tenant rights. The statute eschews a narrow dictionary definition in favor of a broad statutory definition that includes, for example, an agreement that requires a tenant to pay all taxes and other government charges

assessed and levied against the property. D.C. Code § 42-3404.02(b)(4). Such agreements are not "sales" in common parlance or under any dictionary definition – they are leases – but defining "sale" for TOPA purposes in this broad manner prevents landlords from creating a loophole that confers the burdens, but not the benefits, of ownership on the tenant. *See also, e.g.*, *William J. Davis, Inc. v. Tuxedo LLC*, 124 A.3d 612, 618 (D.C. 2015) ("Both the 'plain language' and 'legislative history' of TOPA 'leave no doubt that the rights of tenants are paramount in relation to those of others, including subsequent owners.") (quoting *Wilson Courts Tenants' Association v. 523-535 Mellon Street, LLC*, 924 A.2d 289, 294 (D.C. 2007)); *Richman Towers*, 17 A.3d at 619 ("[W]e are required by the Act to resolve any such ambiguity in favor of the broader coverage, thereby advancing the legal rights of tenants and of organizations that represent them."); *1618 Twenty-First Street Tenant's Association, Inc. v. The Phillips Collection*, 829 A.2d 201, 203 (D.C. 2003) ("The Act's overarching purpose is to protect tenant rights.").

More specifically, transfer of majority interest must constitute a TOPA sale "[t]o discourage the displacement of tenants through the conversion or sale of rental property," D.C. Code § 42-3401.02(1); *accord* D.C. Code § 42-3401.02(6a) ("minimizing displacement"), and "[t]o preserve rental housing which can be afforded by lower income tenants in the District*," id.* § 42-3401.02(2); *accord id.* §

42-3401.02(6a) ("preserving affordable rental housing").[6] A new majority co-owner can displace a tenant or increase the rent beyond the affordability of the tenant, just as a new 100% owner can, precisely because, as explained above, the majority co-owner has "control of ownership" like a 100% owner.

Transfer of majority co-ownership must also constitute a TOPA sale because it creates the same economic opportunity that TOPA assigns to tenants upon a 100% sale. In either case, an economic opportunity arises when the transfer of ownership interest is for less than market value, and TOPA assigns that economic opportunity to the tenant by giving both a right of first refusal and the ability to sell that right. *See* D.C. Code § 42-3404.06 (giving a tenant the ability to assign or sell their TOPA rights at the "tenant's sole discretion"); *Allman v. Snyder*, 888 A.2d 1161, 1169 (D.C. 2005). TOPA vindicates these rights without unduly treading on the owner's interests by giving tenants these rights only at a time when the owner has indicated

[6] *See also Richman Towers*, 17 A.3d at 611 (noting that the Council enacted TOPA to, among other things, "discourage the displacement of tenants [and] preserve affordable rental housing"); *id.* at 619 (noting that *both* the right to purchase the unit and the ability to assign/sell TOPA rights further the goals of "'preserving affordable rental housing[] and minimizing displacement'") (quoting D.C. Code § 42-2401.02(6a)); *Wilson Courts*, 924 A.2d at 289 (relying on this purpose to explain that TOPA could be enforced against the new owner of a property, not just the property's original owner); *Tuxedo*, 124 A.3d at 617 (citing TOPA's purpose of avoiding tenant displacement); *Malik Corp. v. Tenacity Group, LLC*, 961 A.2d 1057, 1062 (D.C. 2008) (same); *Linen v. Lanford*, 945 A.2d 1173, 1177 (D.C. 2008) (same); *Allman v. Snyder*, 888 A.2d 1161, 1165-66 (D.C. 2005) (same).

a willingness to part with its interest in the property upon terms that can be met by the tenant (or the tenant's assignee).[7]

These interests would be thwarted if the voluntary change of majority co-ownership were not treated as a TOPA sale. For purposes of TOPA interests, a change in majority co-ownership is the same as a change in 100% ownership; in both situations: (1) the tenant's protected interests are at risk because the control over the property has changed, (2) an economic opportunity may be created if the transfer is for less than market value, (3) TOPA protects the tenant and assigns that opportunity to the tenant by providing a transferable right of first refusal, and (4) that right does not unduly interfere with the owner's interests because the owner has agreed to relinquish control.

There is a long history of owners seeking to circumvent TOPA through the creation and exploitation of loopholes. Finding no TOPA sale in the transfer of majority ownership would create such a loophole because, as happened here, it coulr result in an individual, over the course of two transactions, going from being a 40% owner to a 100% owner without providing the tenant with any TOPA rights. Both

[7] TOPA also works in concert with rent control laws to prevent improper raising of rents through a change in control of the property. *See* Testimony of Maggie Donahue before the Committee on Housing and Community Development of the Council of the District of Columbia (Oct. 19, 2016), *available at* https://www.legalaiddc.org/wp-content/uploads/2016/10/mdonahue10.19.16.pdf.

the Legislature and this Court have rejected attempts to create such loopholes and should continue to do so to fulfill TOPA's important purposes.

As far back as 1988, one prospective owner attempted to evade TOPA by entering into a "master lease agreement" instead of a sales contract. The Legislature quickly responded by enacting what is now D.C. Code § 42-3404.02(b), specifying that the new enactment should be applied retroactively. *See generally West End Tenants Association v. George Washington University*, 640 A.2d 718 (D.C. 1994). Although this Court held that the new enactment could not be applied retroactively, the new legislation effectively plugged that particular loophole (and a number of other potential loopholes) going forward. Indeed, that enactment created the broad definition of "sale" as a TOPA term of art.

Owners' attempts to subvert TOPA continued, as did the Legislature's efforts to prevent owners from doing so. One of the owners' attempts to undermine the statute was so pervasive that it earned a popular nickname; the so-called 95/5 loophole involved owners transferring a high percentage ownership interest (typically 95%) in one transaction that they claimed was not a TOPA sale because it was less than 100% and then waiting a year before transferring the remaining ownership interest, again without providing notice or a right of first refusal. The Council eliminated this loophole in 2005 by amending TOPA "to clarify that the transfer of 100% of the interests in an entity that owns an accommodation as its sole

asset to one transferee is *not the exclusive example of a sale* . . . [and] to clarify that the [statutory] examples of sales are non-exhaustive or exclusive." Rental Housing Conversion and Sale Amendment Act of 2005, at 1 (emphasis added) (available at https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/Rental_Housing_Conversion_and_Sale_Amendment_Act_of_2005.pdf). The attempts to use this loophole were widespread and its elimination was widely reported and hailed as an important vindication for tenants' rights under TOPA.[8] The same TOPA amendment also closed a different loophole: "a routine system that was developed by select attorneys representing landlord interests in conjunction with officials at the

[8] *See*, *e.g.*, Kemit A. Mawakana, *Power and Law, Bait and Switch: Debunking "Law" as a Tool of Societal Change*, 36 Oklahoma City University Law Review 93, 102 (2011) ("The 95/5 loophole allowed owners to sell a ninety-five percent interest in their property to a party, and then, after waiting a year, sell the remaining five percent to the same party, thus effectively selling the building without triggering TOPA . . . . The 95/5 loophole was closed in May 2005."); Aaron O'Toole and Benita Jones, *Tenant Purchase Laws as a Tool for Affordable Housing Preservation: The D.C. Experience*, 18 Journal of Affordable Housing & Community Development Law 367, 371 n.13 (2009) ("Prior to the 2005 amendments, the agency responsible for administering TOPA had interpreted that act to define a sale as the transfer of 100 percent of an owner's interest in a property in one more transactions within a twelve-month period. As a result owners were able to bypass TOPA by structuring step transactions in which they transferred a significant interest, often 95 percent or 99 percent, and then transferred the remaining interest after the expiration of the twelve-month period."); Aaron Wiener, *Opportunity Cost*, Washington City Paper, Feb. 13, 2015 ("In 2005, the D.C. Council amended TOPA to close the 95/5 loophole."); Eric M. Weiss, *Renters Vent Anger over Housing Crunch*, Washington Post, Feb. 17, 2005 (describing these "95/5" transfers and quoting a major landlord as stating that "[c]learly there have been some abuses . . . [with] 95/5 sales where the intent is to get around the law").

Department of Consumer and Regulatory Affairs" under which landlords evaded TOPA by obtaining unfounded but favorable "regulatory opinion letters" that effectively terminated TOPA rights without notice to the tenant or a hearing. Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Committee Report on Bill 16-50, the "Rental Housing Conversion and Sale Act of 2005," at 3 (March 11, 2005) (available at http://lims.dccouncil.us/Download/1077/B16-0050-COMMITTEEREPORT.pdf).

Despite the closing of these loopholes, landlords continue to attempt to evade TOPA, and sadly often succeed in doing so. A 2006 article described an owner's sale of a "50 percent share" of a building to an investor, and the resulting eviction of a tenant family. *See* Ryan Grim, *The Painmaker: The D.C. Council closed Richard Luchs' favorite loophole. So the real estate attorney found another*, Washington City Paper, Jan. 13, 2006. In 2009, testimony before the Council explained how brokers attempt to exploit the settlement exemption in TOPA by marketing properties that "are subject to Court-ordered sales as being exempted from TOPA, thereby 'facilitating a quick transaction.'" Testimony of Johanna Shreve before the Committee on Housing and Workforce Development and the Committee on Public Services and Consumer Affairs Public Oversight Roundtable, 4 (Apr. 30, 2009) (available at https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2009_04_

30_b18_242_topa_exemption_clarification_ota_testimony_final_doc.pdf). In 2011, this Court observed that a real estate broker had formed a sham entity that "did not possess any characteristic of a genuine business entity," and "which obviously existed only for the purpose of avoiding coverage of the transaction under TOPA" by receiving a 0.01% interest in the property. *Richman Towers*, 17 A.3d at 594 n.7 & at 607 n.16; *accord id.* at 608 (transaction included transfer of 0.01% interest "to avoid the requirements of TOPA"). In 2015 a Council Committee examining TOPA found "very troubling apparent attempts to manipulate the interpretation of the meaning of a 'bona fide offer of sale.'" Council of the District of Columbia Committee on Housing and Community Development Report on B21-0147, the "TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015," at 8 (Oct. 21, 2015) (available at http://lims.dccouncil.us/Download/33571/B21-0147-CommitteeReport1.pdf). And most recently, Legal Aid testified before the Council regarding the misuse of TOPA to evade rent control restrictions. *See* Testimony of Maggie Donahue before the Committee on Housing and Community Development of the Council of the District of Columbia (Oct. 19, 2016) (available at https://www.legalaiddc.org/wp-content/uploads/2016/10/mdonahue10.19.16.pdf).

This Court has recognized these many, varied, and creative attempts to undermine TOPA. *See Richman Towers*, 17 A.3d at 604 (noting the need to "'limit[] the opportunities for gamesmanship – in which sellers of rental housing endeavor to

devise increasingly ingenious mechanisms for circumventing the Council's clear intent to protect tenants' opportunities to purchase their rental accommodations before owners may sell them'") (quoting Legal Aid *amicus curiae* brief). And this Court has also recognized the need to thwart these attempts. Specifically with respect to TOPA, this Court stated that "we should foreclose 'sophisticated as well as simple minded modes of nullification or evasion' of remedial statutes." *Id.* at 604 n.15 (quoting *Goodman v. District of Columbia Rental Housing Commission*, 573 A.2d 1293, 1297 (D.C. 1990)). Reading TOPA to exclude from its definitions of "sale" a transfer of majority ownership would create a loophole that owners would undoubtedly exploit in a manner that could ultimately eviscerate the statute. The integrity of the most basic TOPA rights thus depends upon properly reading the statute's plain language, under which a transfer of majority ownership is a change in control and, therefore, a TOPA sale.

CONCLUSION

For the foregoing reasons, this Court should hold that a TOPA "sale" occurs when one co-owner who has a majority interest in a property transfers some or all of that interest to another co-owner who thereby ends up with a majority interest in the property.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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