No. 16-CV-600

DISTRICT OF COLUMBIA COURT OF APPEALS

BAYVIEW LOAN SERVICING, LLC,

Appellant,

v.

1390 KENYON STREET CORPORATION,

Appellee.

On Appeal from the Superior Court
of the District of Columbia, Civil Division

BRIEF OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA AND LEGAL COUNSEL FOR THE ELDERLY AS *AMICI CURIAE* IN SUPPORT OF APPELLANT AND FAVORING REVERSAL

Jonathan Levy
Jennifer Lavallee
Jennifer Joseph
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
Tel. (202) 628-1161
Fax (202) 727-2132
Counsel for Amicus Curiae – Legal Aid Society of the District of Columbia

Amy Mix
Joanne Savage
Legal Counsel for the Elderly
601 E Street, NW, T3-228
Washington, DC 20049
Tel. (202) 434-2171
Fax (202) 434-6464
Counsel for Amicus Curiae – Legal Counsel for the Elderly

RULE 29(a)(4) DISCLOSURE STATEMENT

The Legal Aid Society of the District of Columbia is a District of Columbia non-profit corporation. It has no parents, subsidiaries, or stockholders.

The Internal Revenue Service has determined that Legal Counsel for the Elderly ("LCE") is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. The Chief Executive Officer of AARP, an organization affiliated with LCE, appoints the LCE Board of Directors. The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. LCE and AARP are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act. Other legal entities related to LCE and AARP include AARP Foundation and AARP Services, Inc. Neither LCE nor AARP has issued shares or securities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Other Authorities

No. 16-CV-600

DISTRICT OF COLUMBIA COURT OF APPEALS

BAYVIEW LOAN SERVICING, LLC,

Appellant,

v.

1390 KENYON STREET CORPORATION,

***Appellee*.**

On Appeal from the Superior Court
of the District of Columbia, Civil Division

BRIEF OF THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA AND LEGAL COUNSEL FOR THE ELDERLY AS *AMICI CURIAE* IN SUPPORT OF APPELLANT AND FAVORING REVERSAL

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

This case presents significant legal questions arising out of a condominium association's foreclosure of a "super-priority" lien under the District of Columbia Condominium Act and the resulting extinguishment of a first mortgage in accordance with this Court's 2014 decision in *Chase Plaza Condominium Association, Inc. v. J.P. Morgan Chase Bank*, 98 A.3d 166 (D.C. 2014). However, the case presents these emerging post-*Chase Plaza* legal issues solely through the

lens of the mortgage company whose lien was determined to be extinguished by the sale, the corporate entity that purchased the property at the foreclosure auction, and the condominium association that conducted the foreclosure. The foreclosed homeowners, who were served only by publication in the quiet title action below, did not appear. As a result, even though homeowners generally have the most to lose from super-priority lien foreclosures, their perspective is not accounted for here.

Amici curiae the Legal Aid Society of the District of Columbia (Legal Aid) and Legal Counsel for the Elderly (LCE) have an interest in protecting low-income homeowners facing foreclosure.[1] Pursuant to this Court's November 22, 2016 order granting the motion for leave to file a brief as *amici curiae,* Legal Aid and LCE submit this brief to offer their perspectives on the practical challenges facing

[1] Legal Aid 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. Today, Legal Aid is the oldest and largest general civil legal services provider in the District of Columbia. Legal Aid advocates on behalf of its clients in the areas of landlord-tenant law, family law, public benefits, and consumer law, including in foreclosure prevention cases. Legal Aid's Appellate Advocacy Project, founded in 2004, has represented parties or *amici* in dozens of cases before this Court.

Founded in 1975, LCE is the leading provider of free legal services and advocacy for vulnerable District seniors. LCE's mission is to improve the quality of life for older District residents, and its primary goals are to serve and empower thousands of low-income District seniors each year in those areas of law involving basic human needs: income, housing, long-term care, personal autonomy, and consumer protection. LCE attorneys have represented District homeowners in mortgage and foreclosure defense cases for more than two decades.

homeowners subject to foreclosure by their condominium associations in the District. *Amici* seek to highlight the draconian consequences of super-priority lien foreclosures: after a sale structured to recover a comparatively minimal amount of past-due condominium assessments, unpaid mortgage liens are extinguished and the foreclosed owner is left without collateral yet personally liable to the lender for the outstanding balance of the mortgage debt—a potentially crushing debt burden for the individual who has just lost her home.

Although homeowners and lenders are typically adverse to each other in actions involving foreclosure, their interests may be aligned when a condominium association forecloses on its super-priority lien. Homeowners and lenders both benefit from avoiding the harsh consequences of super-priority lien foreclosures. To that end, they share an interest in ensuring that a condominium association provides notice of an impending foreclosure sale to lenders and that courts carefully scrutinize foreclosure sales prices.

Accordingly, *Amici* submit this brief in support of the Appellant's request for reversal. *Amici* argue that in light of the lack of protections available to condominium unit owners and the severe consequences of condominium super-priority lien foreclosures, courts must apply the minimal protections that do exist—including their equitable authority to set aside a sale for unconscionably low price—to prevent undue harm and unfairness to homeowners. *Amici* respectfully request

that the Court consider the potential impact on homeowners when analyzing the law and facts here and rendering its decision in this case.

ARGUMENT

I. THE DISTRICT'S CONDOMINIUM FORECLOSURE SCHEME PROVIDES INADEQUATE PROTECTIONS AND LEADS TO HARSH CONSEQUENCES FOR HOMEOWNERS.

A. Condominium Foreclosure Notices Have Increased Since the *Chase Plaza* Decision.

Condominium foreclosures have become a significant problem for D.C. homeowners and lenders alike in recent years. From 2011 to 2014, the average number of non-judicial condominium foreclosure notices issued in the District of Columbia each year was eighty-three. In 2015, 192 condominium foreclosure notices were issued. In 2016, 326 condominium foreclosure notices have been issued as of December 20th—nearly four times the pre-2015 annual average.[2]

This dramatic increase followed this Court's decision in *Chase Plaza Condominium Association, Inc. v. J.P. Morgan Chase Bank*, 98 A.3d 166 (D.C. 2014). In *Chase Plaza*, this Court interpreted the Condominium Act to split a condominium association's lien for assessments into two liens: a lien for six months

[2] Figures based on data from D.C. Recorder of Deeds Online Public Records, *available at* https://countyfusion4.propertyinfo.com/countyweb/login.do?countyname=WashingtonDC (last visited December 20, 2016).

of assessments that is higher in priority than the first mortgage or deed of trust (the "super-priority" lien) and a lien for any additional unpaid assessments that is lower in priority than the first mortgage or deed of trust. *Id.* at 173. The Court held that, when a homeowner defaults on her assessments, the condominium association may foreclose on its super-priority lien and use the proceeds to satisfy any remaining liens in order of priority. If the proceeds are insufficient to satisfy the junior liens—including a first deed of trust—then those liens are extinguished. *Id.* at 173–76. Condominium associations have since jumped at the opportunity to initiate foreclosure actions in which properties can be sold to recover relatively small super-priority lien amounts, with purchasers taking those properties free and clear of any encumbrances—including a previously recorded first deed of trust.

B. Homeowners Facing Condominium Foreclosure Lack Basic Protections at All Stages of the Foreclosure Process.

While the number of condominium foreclosure notices has increased rapidly in recent years, the protections available to unit owners facing foreclosure by condominium associations lag far behind. In stark contrast to foreclosures initiated by mortgage lenders, condominium lien foreclosures in the District follow an expedited process with few substantive and procedural protections for homeowners. For example, although federal law prohibits mortgage lenders from initiating foreclosure until a borrower's loan obligation is at least 120 days delinquent, 12 C.F.R. § 1024.41(f)(1)(i), no such requirement applies to condominium associations

in the District. Even a brief lapse in payment of condominium assessments puts a condominium owner at risk of foreclosure by the unit owners' association. A condominium owner may face foreclosure by the association even if the homeowner is current on the mortgage, or owns the condominium outright and has no mortgage at all. In addition, the condominium foreclosure process does not provide for mediation, a valuable homeowner protection offered in mortgage foreclosures.[3]

Under the existing statutory framework, a condominium association can foreclose simply by sending a notice to the unit owner setting a sale date as few as thirty-one days from the date the notice is mailed. D.C. Code § 42-1903.13(c)(5). The statute does not require that the homeowner actually receive the notice. Further, the short time between the issuance of the foreclosure notice and the auction date means that a homeowner has little opportunity to explore alternatives to foreclosure.

[3] Before a mortgage lender can conduct a non-judicial foreclosure sale, it must first send a notice of default to the homeowner, offer the homeowner the opportunity to participate in formal mediation through the D.C. Department of Insurance, Securities and Banking, and if no agreement is reached through mediation, obtain a mediation certificate allowing the lender to set a sale date. D.C. Code §§ 42-815(b)(1), 42-815.02. If a lender chooses instead to foreclose through the judicial process, it must file a complaint in D.C. Superior Court and serve the homeowner. If the homeowner appears in court for the initial scheduling conference, the parties can request to go to early mediation through D.C. Superior Court's Multi-Door Dispute Resolution program. Mediation benefits homeowners both by providing a forum to negotiate with their lenders and by providing time to explore alternatives to foreclosure, such as refinancing with a different lender or conducting a private sale.

For many homeowners, securing payoff funds, negotiating a repayment plan, or selling to avoid foreclosure is impractical, if not impossible, in fewer than thirty-one days. In addition, the condominium association is only required to advertise the property for sale three times in the fifteen days prior to auction, *id.*, which is often insufficient to generate interest and maximize bidding if the auction goes forward.

While the above-described lack of protections applies to condominium lien foreclosures generally, super-priority lien foreclosures almost always pose an even greater danger to homeowners because the super-priority lien is often both extremely small in absolute terms and significantly smaller than any mortgage lien on the property. In a mortgage foreclosure, the lender typically has a large amount of money at stake that it is seeking to recover by obtaining a sufficiently high bid at the foreclosure sale. That incentive provides a basic level of protection to the homeowner by increasing the chances that the most significant lien on the property will be paid. But in a typical condominium super-priority lien foreclosure, the lien being foreclosed on is small—only a fraction of the value of the property, and far smaller than the balance of any mortgage on the property. The foreclosing condominium association's incentive to recover the amount of the condominium lien is met with a minimal bid—even if a large mortgage balance remains unpaid and the property could be sold for significantly more. Thus, even the barest protection ordinarily provided by the foreclosure process—that the auctioneer will attempt to

obtain a price high enough to satisfy the largest debt owed on the property—is absent for condominium unit owners facing a super-priority lien foreclosure.

C. Super-Priority Lien Foreclosures Have Particularly Harsh Consequences.

For the foreclosed homeowner, the practical result of a super-priority lien foreclosure can be disastrous. When a super-priority sale extinguishes the mortgage lender's first trust lien, the underlying debt continues to exist. In other words, the foreclosed homeowner remains liable for the entire outstanding balance of the debt without the value of the collateral to offset it. Such crushing debt can force a foreclosed homeowner into bankruptcy or put the foreclosed homeowner at risk of a massive money judgment, leading to a lifetime of wage garnishment. Judgments, bankruptcy, and other related credit problems can create significant barriers to foreclosed homeowners' ability to obtain alternative housing or find employment. *See* Kristen Barnes, *"Pennies on the Dollar": Reallocating Risk and Deficiency Judgment Liability*, 66 S.C. L. Rev. 243, 252 (2014); Kimbriell Kelly, *Lenders Seek Court Actions Against Homeowners Years After Foreclosure*, The Washington Post (June 15, 2013), https://www.washingtonpost.com/investigations/lenders-seek-court-actions-against-homeowners-years-after-foreclosure/2013/06/15/3c6a04ce-96fc-11e2-b68f-dc5c4b47e519_story.html?utm_term=.7127b7b9fcc0. All of these negative consequences are, of course, in addition to the obviously detrimental effect

of losing one's home and any equity that the homeowner may have had in the property.

No homeowner reasonably expects that her home could be sold for the kind of shockingly low prices that often result from super-priority lien foreclosures. Nor does any homeowner reasonably expect that after the loss of her home she may still remain liable for the entire balance of her mortgage debt, the collateral consequences of which are likely to trap her in a cycle of poverty for years to come. Nonetheless, these are frequently the results of super-priority lien foreclosures.

II. THE ABSENCE OF A NOTICE REQUIREMENT FOR MORTGAGE LENDERS DEPRIVES HOMEOWNERS OF AN OPPORTUNITY TO PREVENT FORECLOSURE.

Even though a condominium association has the power to conduct a super-priority lien foreclosure sale that extinguishes a previously recorded first mortgage, the Condominium Act does not require associations to provide any notice of the foreclosure sale to mortgage lenders. *Amici* are not commenting on the constitutional issues raised by Appellant, which appear to be adequately briefed. Instead, we explain how the lack of required notice to lenders detrimentally affects homeowners because, as a practical matter, many homeowners are unable to stop an imminent foreclosure sale without the assistance of their mortgage lender.

Notice to the lender would diminish the risks associated with mortgage lien extinguishment for both homeowners and lenders. If a lender receives notice of an

upcoming condominium foreclosure sale and realizes that its lien is in danger of being extinguished, the lender may choose to pay the amounts necessary to stop the foreclosure and add that amount to the homeowner's mortgage balance. Alternatively, the lender may participate in the bidding to ensure that the price is high enough to cover the mortgage balance.

Without a requirement of notice to lenders, however, the chances that a condominium foreclosure sale will go forward and that the mortgage lien will be extinguished due to the inadequacy of the winning bid increase significantly. By the time a homeowner actually receives the foreclosure notice in the mail, if she receives the notice at all,[4] the sale will be less than a month away. Selling the property to avoid foreclosure is unrealistic under those time constraints. As a result, the only practicable way to avoid foreclosure is to try to work out a payment plan that is both

[4] A homeowner may not receive the notice of condominium foreclosure sale in time for any number of reasons, including if the homeowner is hospitalized or in a nursing home, deployed, or traveling. In the mortgage foreclosure context, there are several protections to address these circumstances and avoid inequitable results. In a judicial foreclosure, for example, there are service of process requirements, rules for vacating defaults and default judgments, and a requirement that plaintiffs file a Servicemembers Civil Relief Act affidavit stating whether a defendant is in the military service in any case in which default has been entered. *See* D.C. Super. Ct. Civ. R. 4, 55, 60; 50 U.S.C. § 3931(b). In non-judicial foreclosure cases, a homeowner who fails to timely elect mediation or fails to appear for mediation can be given another opportunity to participate in the program and avoid foreclosure if good cause is shown. D.C. Code §§ 42-815.02(d)(1), 42-815.02(e)(2)(C). None of these protections is available for homeowners facing a condominium foreclosure.

acceptable to the condominium association and affordable for the homeowner,[5] or to come up with the full amount of funds necessary to stop the sale. For many homeowners, and especially for low-income homeowners, this is simply not feasible. This means that whether the homeowner can avoid foreclosure may ultimately depend on whether her mortgage lender steps in to tender payment. A mortgage lender can only do so if it receives meaningful notice of the sale in advance.[6]

A typical homeowner facing foreclosure—who is unlikely to know what a super-priority lien foreclosure is, let alone the impact of such a foreclosure on first trust mortgages under current District law—is in no position to provide a mortgage lender with such notice. Even if a homeowner were to recognize the importance of

[5] In contrast to the mortgage foreclosure context in which the relationship between the foreclosing lender and the homeowner is purely financial, foreclosing condominium associations are composed of the distressed unit owner's neighbors. As a result, the individual unit owner's ability to pay may not be the only factor in whether the association will accept or reject a proposed payment plan. Personal relationships and other factors may play a role in an association's decision whether to work with a unit owner or to press forward with foreclosure, creating a risk of discrimination or disparate impact.

[6] As this Court noted in *Chase Plaza*, the drafters of the uniform laws upon which the District's condominium law is based commented that lenders could protect themselves by creating an escrow requirement for condominium assessments. 98 A.3d at 175, 177. There may be practical problems associated with escrowing these assessments, however, and the reality is that lenders are not currently requiring them to be escrowed. Even if they were being escrowed, this would not alleviate the need to notify lenders of an upcoming super-priority sale.

notifying the mortgage lender of an upcoming condominium foreclosure, a call to the mortgage servicing company's general customer service number explaining that a condominium foreclosure auction has been set is unlikely to be effective given the complexity of the legal issues. Rather, the homeowner would need to reach the appropriate legal representative for the lender who could recognize the threat to the lender's property interest under D.C. law and take quick action to tender the necessary payment to stop the sale. As a result, homeowners who lack the resources or sophistication to timely and effectively notify their lenders of an upcoming condominium foreclosure are more likely to be foreclosed upon than homeowners with greater means and savvy. Condominium associations must be required to provide notice directly to mortgage lenders prior to foreclosure as a matter of basic fairness and access to justice, and to prevent undue harm.[7]

[7] On December 20, 2016, the D.C. Council passed a final amendment to a bill that would, if signed into law, provide some basic and necessary improvements to the Condominium Act, including a new statutory requirement that lenders be provided with notice of a condominium foreclosure sale. Most of the other dangers and inadequacies relating to condominium foreclosure procedures highlighted by *Amici* in this brief, however, would remain unchanged even if the bill is enacted as law. *See* D.C. Council Bill B21-0443, Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016.

III. THE COURT'S POWER TO SET ASIDE A SALE DUE TO UNCONSCIONABLY LOW PRICE IS A CRITICAL PROTECTION OF LAST RESORT FOR HOMEOWNERS.

Given the lack of protections available to condominium unit owners and the severe consequences that result from super-priority lien foreclosures, courts should apply what minimal safeguards *do* exist to prevent undue harm and unfairness to homeowners. If a lender does not tender payment to stop a condominium foreclosure from going forward, as was the case in the instant action, the doctrine of unconscionably low price is a critical protection of last resort for homeowners.[8] This post-sale protection is particularly important in the context of super-priority lien foreclosures structured to recover a minimal amount of past-due condominium assessments, which are uniquely likely to yield inadequate prices and unfair results.

Courts have recognized that a foreclosure sale may be set aside based on inadequate sales price, including on the basis of price alone if the amount obtained

[8] District condominium law lacks a post-sale right of redemption—a protection that exists by statute in a number of other jurisdictions and serves as an important remedy for homeowners whose homes were sold for inadequately low prices. In fact, of the few jurisdictions that specifically allow a condominium super-priority lien foreclosure to extinguish a first mortgage (D.C., Nevada, and Rhode Island), the District is the only jurisdiction that does not provide a post-sale right of redemption. *See* Nev. Rev. Stat. § 116.31166(3) (unit owner or holder of security interest may redeem by making payment to purchaser within 60 days after sale); R.I. Gen. Laws § 34-36.1-3.21(c) (any foreclosure sale held by the association is subject to a thirty-day right of redemption running in favor of the holder of the first mortgage or deed of trust of record); *see also* Cal. Civ. Code § 5715; Mich. Comp. Laws § 559.208(2); Minn. Stat. § 515B.3-116(h)(4); Tex. Prop. Code Ann. § 82.113(g).

is so low as to "shock the conscience." *See BFP v. Resolution Trust Corp.*, 511 U.S. 531, 542 (1994) (noting that a sale may be set aside under state foreclosure law if the price is so low as to "shock the conscience or raise a presumption of fraud or unfairness"); *Jackson v. Fuller*, 66 App. D.C. 239, 241, 85 F.2d 816, 818 (1936).

While there is no hard-and-fast rule as to when a sale price is so low as to shock the conscience, the relevant Restatement provides helpful guidance:

> Generally, . . . a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount . . . . While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.

Restatement (Third) of Property: Mortgages § 8.3 cmt. B (1997). Although the comment goes on to explain that courts may properly refuse to invalidate a sale yielding a price less than 20% of the fair market value where the sale is subject to substantial senior liens, *id.*, the exact opposite is true in super-priority lien foreclosures, where properties are sold free and clear of any mortgage and therefore the shockingly low prices that result are exactly the kind of sales that should be invalidated as unconscionable.

Even if an inadequate price is not so low as to shock the conscience, a court in its equitable authority may still be justified in setting aside a sale if it occurs in combination with some other "unfairness or irregularity." *See Steward v. Moskowitz*,

5 A.3d 638, 652 (D.C. 2010) (setting aside execution sale); *Pizza v. Walter*, 694 A.2d 93, 99 (Md. 1997) ("[W]hen inadequate price is coupled with other evidence of irregularity the sale may be set aside, even if the price might not shock the conscience of the court."), *mandate withdrawn*, 697 A.2d 82 (Md. 1997); *McCartney v. Frost*, 386 A.2d 784 (Md. 1978) ("If the sale is so grossly inadequate as to shock the conscience of the court, or if there be but slight circumstances of unfairness in addition to great inadequacy of price, a sale will be set aside.").

When reviewing challenges to the adequacy of prices resulting from condominium super-priority lien foreclosures, courts of equity should consider the gross unfairness to homeowners that results from the lack of protection in the D.C. condominium foreclosure process—including the harsh consequence of a foreclosed homeowner being left with a crushing amount of mortgage debt after an auction sale structured to recover only a modest amount of past-due condominium fees.

This Court has previously considered how vigorously the broader regulatory scheme governing a particular foreclosure protects an affected party. *See Perry v. Virginia Mortgage & Inv. Co.*, 412 A.2d 1194 (D.C. 1980). In *Perry*, the Court declined to hold the trustee to a higher standard and set aside the sale of a homeowner's property for a depressed price at auction. *See id.* at 1198–99 & n.15. But that decision relied on an express consideration of the extensive consumer protections imposed by the U.S. Department of Housing and Urban Development

(HUD) to protect homeowners facing foreclosure on the type of loan in question. *See id.* at 1198–99 & n.14. The Court also carefully scrutinized the actual steps taken by the lender and trustee to assist the borrowers in that case, including multiple notices, a referral to a HUD-approved housing counseling agency, a personal letter from the collections agent, and at least one postponement of the sale. *See id.* at 1196 & nn.3, 4, 6. There, the Court found no basis for imposing a greater duty on the trustee because the homeowner had numerous protections under federal regulations; however, the Court did not rule out such a consideration under different facts. These federal regulatory protections in *Perry* are notably absent from the condominium foreclosure scheme in the District which, as explained above, lacks many basic protections.

Condominium super-priority lien foreclosures that result in grossly inadequate sales prices and extinguish first trust mortgages—leaving foreclosed homeowners unexpectedly liable for large amounts of mortgage debt previously secured by the value of the property—pose a unique harm and unfairness to homeowners. It is important for courts of equity to consider these harms and issues of unfairness when deciding whether to apply the last—and for many homeowners, the only—protection of setting aside a sale based on inadequate price.

Amici respectfully request that the Court bear the consequences to homeowners in mind when reviewing challenges to super-priority lien foreclosures

and the inadequate sales prices that frequently result, including in this case. The sale price here, which Appellant notes was 6.472% of the property's tax-assessed value and 6.896% of its appraised value, is unconscionable. In addition to being shockingly low on its face, this price is tainted by a foreclosure process that failed to protect the homeowners' interests, culminating with a sale structured to recover only a small fraction of the total debt owed by the homeowner and secured by the value of the property.

Because the trial court hearing this quiet title action was sitting in equity, it is difficult to determine whether its erroneous statement that the price was not unconscionable affected its ultimate decision to grant Appellee's motion for summary judgment quieting title to the property, especially given some of the unique facts involved in this particular case. Accordingly, the Court should vacate the decision below granting Appellee's motion for summary judgment and remand the case for reconsideration in light of the unconscionable purchase price. In the event this Court decides not to address the adequacy of the price in this particular appeal, it should make clear that courts retain the power to set aside a foreclosure sale based on inadequate price and that the ability to do so is a particularly important safeguard of homeowner rights in the context of condominium super-priority lien foreclosures.

CONCLUSION

For the foregoing reasons, the Superior Court's order granting Appellee's motion for summary judgment should be vacated and the matter should be remanded for reconsideration in light of the unconscionable purchase price.

Respectfully submitted,

/s/ Jennifer Lavallee_____
Jonathan H. Levy (D.C. Bar No. 449274)
Jennifer Lavallee (D.C. Bar No. 976945)
Jennifer Joseph (D.C. Bar No. 1025694)
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
Tel. (202) 628-1161
Fax (202) 727-2132
jlevy@legalaiddc.org
jlavallee@legalaiddc.org
jjoseph@legalaiddc.org
Counsel for Amicus Curiae – Legal Aid Society of the District of Columbia

/s/ Amy Mix_____
Amy Mix (D.C. Bar No. 483483)
Joanne Savage (D.C. Bar No. 986053)
Legal Counsel for the Elderly
601 E Street, NW, T3-228
Washington, DC 20049
Tel. (202) 434-2171
Fax (202) 434-6464
amix@aarp.org
Counsel for Amicus Curiae – Legal Counsel for the Elderly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing *Brief of Amici Curiae* was delivered to the following parties via electronic service this 22nd day of December, 2016:

Daniel J. Pesachowitz
Samuel I. White, P.C.
611 Rockville Pike, Suite 100
Rockville, MD 20852

Richard J. Bianco
Hessler Bianco Group
1313 F Street, NW, Suite 300
Washington, DC 20004

Thomas C. Mugavero
Whiteford, Taylor & Preston, LLP
3190 Fairview Park Drive
Suite 800
Falls Church, VA 22042

/s/ Jonathan H. Levy
Jonathan H. Levy