

**IN THE  
DISTRICT OF COLUMBIA COURT OF APPEALS**

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NO. 21-CV-735

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
NO. 2020 CA 3854 B

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**SANTORINI CAPITAL, LLC, *et al.***

Appellant

v.

**WFG NATIONAL TITLE INSURANCE COMPANY, LLC**

Appellee

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On Appeal from the Superior Court for the District of Columbia

(The Honorable Judge William M. Jackson)

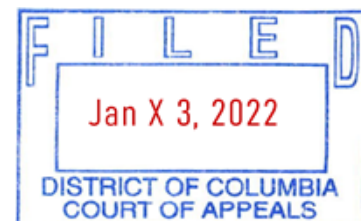
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**APELLANT'S INITIAL BRIEF**

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January 3, 2022

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<sup>1</sup> Application for admission pro hac vice has been sent to Committee on Unauthorized Practice of Law.

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## **APPELLATE JURISDICTION**

This appeal is from a final order of the Superior Court of the District of Columbia. This Court has appellate jurisdiction over such appeals pursuant to D.C. Code § 11-721(a)(1) (2021 repl.).

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Whether Defendants' Motion for Judgment on the Pleadings should have been granted or denied.

## **STATEMENT OF CASE**

On September 2, 2020, Plaintiffs Santorini and SC Holdings PF2, LLC, filed a complaint against Defendant WFG in the Superior Court, alleging breach of contract and bad faith regarding their failure to pay pursuant to a title insurance policy. App. at 2. Defendant WFG filed a Motion for Judgment on the Pleadings on April 5, 2021. *Id.* at 3.

On April 19, 2021, Plaintiffs filed a Statement of Opposing Points and Authorities, opposing Defendant WFG's motion. App. at 3. Defendant WFG filed a Reply in Further Support of its Motion for Judgment on the Pleadings on April 26, 2021. *Id.*

On October 4, 2021, the Superior Court issued an Order Granting Motion for Judgment on the Pleadings. App. at 4. On October 14, 2021, the Superior Court issued a Judgment Order entering judgment in favor of Defendant WFG on all counts of the Complaint. *Id.* This appeal followed. *Id.*

## **STATEMENT OF RELEVANT FACTS**

On or about July 25, Plaintiff Santorini entered into an agreement to provide financing for the acquisition of a property located at 226 Anacostia Road SE, Washington D.C. 20019 (“Property”) to borrower Project 2 Funding, LLC. App. at 7-8. Defendant WFG, by and through its agent Defendant Assure, executed a title insurance policy (“Policy”) in favor of Plaintiff Santorini insuring the loan to Project 2 Funding. *Id.* at 8. The Policy offered coverage to Santorini up to the amount of \$299,850. *Id.* The Policy stated that it would “insure[] as of [the] Date of Policy ... against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by reason of ... [a]ny defect in or lien or encumbrance on the Title. *Id.*

Project 2 Funding applied the loan money acquired from Santorini to a Deed of Trust held by Boardwalk, LLC, thereby causing Boardwalk to relinquish its interest in the Property, and vesting title solely in 5037 Meads St., LLC (“5037 Meads”). App. at 8. Notably, 5037 Meads had previously filed for protection in bankruptcy under Chapter 11 and had been in bankruptcy since July 15, 2015. *Id.* 5037 Meads subsequently, by Deed of Gift, conveyed its fee simple interest in the Property to Project 2 Funding, without notice to or permission from the Bankruptcy Court. *Id.*

Project 2 Funding eventually defaulted on its obligations under the loan agreements it had executed with Santorini. App. at 8. Santorini subsequently

foreclosed on the loans and purchased the property through its affiliate SC Holdings PF2, LLC (“SC Holdings”). *Id.* Subsequently, Santorini received notice from the Trustee for the bankruptcy estate of 5037 Meads that, pursuant to 11 U.S.C. § 549, he would be moving to avoid the transfer of title from 5037 Meads to Project 2 Funding, thereby re-vesting title in 5037 Meads. *Id.* On January 3, 2019, nearly two years after the conveyance from 5037 Meads to Project 2 Funding, the D.C. Bankruptcy Court granted the Trustee’s motion. *Id.*

By the time it received notice of the avoidance, Santorini and SC Holdings had, at significant expense, renovated the property and entered into a sale contract with a buyer. App. at 9. After learning about the issues with the title, the buyer terminated the contract. *Id.* Following the buyer’s withdrawal, Santorini went on to incur substantial additional expenses associated with the holding and upkeep of the property, including marketing costs, the accumulation of interest, real estate taxes, and insurance. *Id.*

To resolve the title issue, Santorini engaged in settlement negotiations with the bankruptcy Trustee. App. at 9. After extended negotiations, an agreement was reached whereby Santorini would tender payment of \$42,000 in exchange for the Trustee releasing the Property from the bankruptcy estate. *Id.* This agreement was eventually approved by the Bankruptcy Court, and, upon entry of a September 5, 2019 Order, title was re-vested with SC Holdings. *Id.*; *see id.* at 33-35.

After resolving matters with the Trustee and Bankruptcy Court, Santorini requested that WFG make a contribution to the \$42,000 payment required to resolve the issues stemming from the cloud on title caused by the bankruptcy. App. at 9. WFG declined, indicating that Santorini had not suffered a compensable loss. *Id.*

### **SUMMARY OF ARGUMENT**

There is a question regarding which standard should be applied when ruling on a Motion for Judgment on the Pleadings.

One potential standard is that of a Super. Ct. Civ. R. 12(b)(6) motion to dismiss for failure to state a claim. Under that standard, a complaint must contain sufficient factual matter, accepted as true, to state a claim of relief that is plausible on its face. In their Complaint, Plaintiffs described the terms of the contract and the nature of Defendants' breach of that contract. Plaintiffs have put forth sufficient factual matter that must be accepted as true and which states a claim for relief that is, at the very least, plausible on its face. Accordingly, a motion for judgment on the pleadings under this standard should have been denied.

Another potential standard is that of a Super. Ct. Civ. R. 56 motion for summary judgment. Under that standard, a plaintiff must demonstrate that there is a genuine issue of material fact. Based on the record, there are genuine issues of material fact as to Plaintiffs' claim of breach of contract. Accordingly, a motion for judgment on the pleadings under this standard should have been denied.



Regardless of the standard employed, Defendants' motion for judgment on the pleadings should have been denied.

## **ARGUMENT**

### **A. DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS SHOULD HAVE BEEN DENIED**

#### **i. Standard of Review**

The standard of review for grant of judgment pursuant to a Motion for Judgment on the Pleadings is de novo. *Wilson Courts Tenants Ass'n, Appellant v. 523-525 Mellon St., LLC*, 924 A.2d 289, 292 (D.C. 2007).

#### **ii. Question Regarding Which Standard to Apply**

Case law research demonstrates that it is not well-settled which standard a court should apply when ruling on a Motion for Judgment on the Pleadings filed pursuant to Super. Ct. Civ. R. 12(c). In some decisions, this Court indicates that the standard for a Rule 12(c) motion is substantially similar to a Motion to Dismiss for Failure to State a Claim under Super. Ct. Civ. R. 12(b)(6). *See Osei-Kuffnor v. Argana*, 618 A.2d 712, 713 (D.C. 1993). In other decisions, this Court uses language to suggest that a Rule 12(c) motion is substantially similar to a Motion for Summary Judgment under Super. Ct. Civ. R. 56. *See Amberger & Wohlfarth, Inc. v. District of Columbia*, 300 A.2d 460, 464 n.5 (D.C. 1973). Federal Courts do not offer much clarity on the issue. *Compare Jung v. Ass'n of Am. Med. Colleges*, 339 F. Supp. 2d 26, 35-36 (D.D.C. 2004) (holding that 12(c) and 12(b)(6) are substantially the same

under the Federal Rules of Civil Procedure), *with Lopez v. CIA*, 301 F. Supp. 3d 78 (D.D.C. 2018) (noting that the standard for a Motion for Judgment on the Pleadings is more similar to the standard for a Motion for Summary Judgment). Given that there is a question regarding which standard to apply, both will be discussed herein.

### **iii. Standard for Rule 12(b)(6)**

As stated above, this Court has previously held that a motion filed pursuant to “Rule 12(c) is substantially similar to a 12(b)(6) motion.” *Osei-Kuffnor*, 618 A.2d at 713. The burden required to survive dismissal pursuant to a Rule 12(c) motion is very low. *See Equal Rights Ctr. v. Props. Int’l*, 110 A.3d 599, 603 (D.C. 2015) (“At the pleading stage, plaintiff’s burden in pleading injury is not onerous.”). ““To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim of relief that is plausible on its face.’”” *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2001) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Courts are required to give substantial deference to plaintiffs regarding the truth of their allegations. *Id.* (““When there are well-pleaded factual allegations, *a court should assume their veracity* and then determine whether they give rise to an entitlement to relief.””) (emphasis added).

When ruling on a Rule 12(c) motion, courts should not resolve factual disputes. *See Fraser v. Gottfried*, 636 A.2d 430, 432 (D.C. 1994) (“The purpose of a 12(b)(6) motion is to test the formal sufficiency of a statement of the claim for

relief; it is not a procedure for resolving a contest about the facts or merits of the case.”) (internal quotations omitted). “Dismissal ‘is warranted only when ‘it appears beyond doubt that the plaintiffs can prove *no set of facts* in support of [their] claim which would entitle [them] to relief.’” *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996) (quoting *Klahr v. District of Columbia*, 576 A.2d 718, 721 (D.C. 1990) (emphasis added)).

Federal Courts have held similarly. *See Jung*, 339 F. Supp. 2d at 35-36 (holding that 12(c) and 12(b)(6) are substantially the same under the Federal Rules of Civil Procedure); *Beverly Enters. v. Herman*, 50 F. Supp. 2d 7, 11 (D.D.C. 1999) (“A motion to dismiss should not be granted ‘unless plaintiffs can prove no set of facts in support of their claim which would entitle them to relief.’”) (quoting *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)); *Longwood Vill. Rest., LTD. v. Ashcroft*, 157 F. Supp. 2d 61, 66 (D.D.C. 2001) (holding that a motion for judgment on the pleadings should be granted “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations,” and stating that “[a]ll allegations contained in the complaint must be accepted as true.”).

“[T]o state a claim for breach of contract so as to survive a Rule 12(b)(6) motion to dismiss, it is enough for the plaintiff to describe the terms of the alleged contract and the nature of the defendant’s breach.” *Francis v. Rehman*, 110 A.3d

615, 620-21 (D.C. 2015). In their complaint, Plaintiffs described the terms of the title insurance contract between them and Defendants that provided coverage against “loss or damage, not exceeding the Amount of Insurance, sustained or incurred by reason of ... [a]ny defect in or lien or encumbrance on the Title.” App. at 10. Plaintiffs also described the nature of Defendants breach of that contract, stating that “[Defendants] failed to make payment as promised in the Policy to cover the expense of clearing the cloud on title caused by the 5037 Meads Street bankruptcy estate claim on the property.” *Id.* According to the standard laid out by this Court in *Francis*, Plaintiffs stated a claim for breach of contract that should survive a Rule 12(b)(6) motion. *See Francis*, 110 A.3d at 620-21. Given that the standard for a Rule 12(b)(6) motion is substantially similar to the standard for a Rule 12(c) motion, it follows that Plaintiffs stated a claim for breach of contract that should survive a Rule 12(c) motion. *See Osei-Kuffnor*, 618 A.2d at 713.

Further, Plaintiffs did more than just meet the low burden required to state a claim for breach of contract as described by this Court in *Francis*. Plaintiffs alleged with specificity the damages they incurred as a result of Defendants breach, to wit: “\$42,000 necessary to clear title to the Property, as well as additional expenses in excess of \$125,000 ....” App. at 10. Plaintiffs went into detail regarding those additional expenses, explaining that Plaintiffs “renovated the property,” “entered into a sale contract with a buyer,” and, after the buyer withdrew from that sale due

to the title issues in question, incurred costs relating to the “holding and upkeep of the property, including marketing costs, the accumulation of interest, real estate taxes, and insurance.” *Id.* at 9. Plaintiffs laid out well-pleaded factual allegations which must be accepted as true and which would entitle them to relief. Accordingly, Plaintiffs clearly met and exceeded the burden required under Rule 12(b)(6). Defendants’ Motion for Judgment on the Pleadings should have been denied.

#### **iv. Standard for Rule 56**

As stated above, this Court has also previously indicated that a motion filed pursuant to Rule 12(c) is substantially similar to a motion filed pursuant to Rule 56. *See Amberger*, 300 A.2d at 464 n.5 (applying the standard for summary judgment in stating “[a]s is true with respect to motions for summary judgment, a motion for judgment on the pleadings should not be granted where there is a genuine issue of material fact.”) (citing *Leventhal v. Phoenix Ins. Co.*, 251 A.2d 391 (1969) and *Nyhus v. Travel Management Corp.*, 466 F.2d 440 (D.C. Cir. 1972), both of which discussed summary judgment); *Bennings Associates v. Joseph M. Zamoiski Co.*, 370 A.2d 1171, 1173 (D.C. 1977) (using language regarding summary judgment in stating “a motion for judgment on the pleadings should not be granted where there is a genuine issue of material fact.”) (citing *Amberger*, 300 A.2d at 464 n.5); *Wilson Courts*, 924 A.2d at 292 (“Judgment on the pleadings may be granted only if, on

the facts as so admitted, the moving party is clearly entitled to judgment.”) (quoting *Bennings*, 370 A.2d at 1173).

Again, Federal Courts have held similarly. *See Lopez*, 301 F. Supp. 3d at 78 (noting that the standard for a motion for judgment on the pleadings is more similar to the standard for a motion for summary judgment than for a motion to dismiss).

If this standard is applied, a Rule 12(c) motion should not be granted when there is a genuine issue of material fact. The United States Supreme Court has defined what a material fact is for the purposes of summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over *facts that might affect the outcome of the suit under the governing law* will properly preclude the entry of summary judgment.”) (emphasis added). With respect to the \$42,000 settlement, Defendants contend that Plaintiffs did not obtain prior written consent before settling. App. at 77. Plaintiffs contend that they did. *Id.* at 98. In order to be covered under the policy, Defendants would have to give prior written consent for a settlement. Accordingly, whether or not Plaintiffs obtained prior written consent is a fact that would affect the outcome of Plaintiffs’ claim.

Regarding the other \$125,000 in expenses, Defendants point specifically to two exclusions in the contract: 3(c) and 6. App. at 75. With respect to Exclusion 3(c), Defendants contend that Plaintiffs sold the Property at a profit and therefore did not suffer a loss. *Id.* Plaintiffs contend that they did suffer a loss because, but for

the expenses associated with clearing the title, the sale would have been much more profitable. *Id.* at 93. Because damages are an essential element of a claim for breach of contract, whether or not Plaintiffs suffered a loss is a fact that would affect the outcome of their claim.

With respect to Exclusion 6, Defendants contend that there was some form of fraudulent conveyance or transfer relating to the Property in a wholly separate proceeding. App. at 75-76. Plaintiffs contend that there was no such fraudulent conveyance or transfer. *Id.* at 95-96. Based on the language of Exclusion 6, whether or not the conveyance or transfer creating the lien on the Property was fraudulent or made with intent to defraud is a fact that would affect the outcome of Plaintiffs' claim. Accordingly, the facts in dispute are material facts.

The United States Supreme Court has also defined what a genuine issue is for the purposes of summary judgment. *See Anderson*, 477 U.S. at 248 (stating that summary judgment is precluded "if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.") The emails between Plaintiffs and Defendant show that Defendant was aware of the potential settlement and, despite numerous opportunities, never objected to the terms. *See App.* at 105-112. Due to this notice and lack of objection, among other things, a reasonable jury could find that Plaintiffs obtained prior written consent when emailing Defendants about the settlement

discussions and therefore could return a verdict requiring Defendants to pay the \$42,000 it cost to clear the title. *Id.* at 97-98. With respect to Defendant's contention that Plaintiffs suffered no loss, Plaintiff has alleged that they spent \$125,000 that they would not have otherwise spent had the title been clear, thereby reducing their profit by \$125,000. *Id.* at 10. A reasonable jury could find that, despite making some profit, Plaintiffs still suffered a loss such that Exclusion 3(c) does not apply and return a verdict for Plaintiffs. A reasonable jury could find that whatever transaction created the lien on the Property was not a fraudulent conveyance or transfer such that Exclusion 6 does not apply and return a verdict for Plaintiffs. Accordingly, the dispute about the material facts is genuine.

Given that there is a genuine dispute as to material facts, Defendants' Motion for Judgment on the Pleadings should have been denied.

**v. Conversion from Rule 12(c) Motion to Rule 56 Motion**

When considering a Rule 12(c) Motion, if a court considers matters outside the pleadings, that motion "shall be treated as one for summary judgment and disposed of as provided in Rule 56 ...." *Scoville St. Corp. v. Dist. TLC Trust, 1996*, 857 A.2d 1071, 1074 (D.C. 2004) (quoting Super. Ct. Civ. R. 12(c)). If this Court finds that matters outside the pleadings have been considered and that Defendants' motion must be treated as a motion for summary judgment, the analysis of section



VI.A.iv., *supra*, still applies. Given that there is a genuine dispute as to material facts, Defendants' Motion for Judgment on the Pleadings should have been denied.

**B. THE TERMS OF THE CONTRACT ARE NOT IN DISPUTE**

In their motion, Defendants argue that judgment on the pleadings is appropriate because “[t]he interpretation of unambiguous terms in an insurance contract is a matter of law.” App. at 73. (citing *St. Paul Fire & Marine Ins. Co. v. Children’s Hosp. Nat. Med. Ctr.*, 670 F. Supp. 393, 397 n.8 (D.D.C. 1987)). The terms of the contract are not in dispute. What is in dispute is whether Plaintiffs obtained prior written consent, whether Plaintiffs suffered a loss, and whether a specific conveyance was fraudulent. These are all factual disputes, not disputes regarding the terms of the contract. A Rule 12(c) Motion “is not a procedure for resolving a contest about the facts or merits of the case.” *Fraser*, 636 A.2d at 432. Resolving a factual dispute at this stage is inappropriate regardless of whether the standard applied is that of a Rule 12(b)(6) motion to dismiss or a Rule 56 motion for summary judgment.

## **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court reverse the ruling of the Superior Court and remand for further proceedings in accordance with this Court's decision.

Respectfully,



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<sup>2</sup> Application for admission pro hac vice has been sent to Committee on Unauthorized Practice of Law.

## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 3rd day of January, 2022, a copy of the foregoing

Brief was sent via email to:

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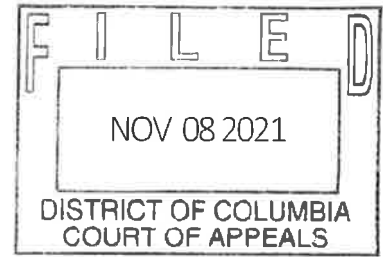
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<sup>3</sup> Application for admission pro hac vice has been sent to Committee on Unauthorized Practice of Law.

**District of Columbia  
Court of Appeals**



**No. M 274-21**

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Thompson, Beckwith,  
Easterly, McLeese, Deahl, Associate Judges

**AMENDED O R D E R**

(FILED—November 8, 2021)

**PILOT PROJECT: PUBLIC ACCESS TO CERTAIN BRIEFS AND ORDERS**

*(Amended to update Section 5 below regarding the filing of the Redaction Certificate Disclosure Form)*

This amended Order updates the court's M-274-21 order, issued on August 1, 2021; the Redaction Certificate Disclosure Form is located on the court's website.

On February 12, 2021, the court issued a notice indicating that it was exploring how best to make documents filed in the court electronically available to the public. The court received a number of very helpful comments in response. As a first step, the court has decided to adopt a pilot project focused on briefs filed and orders issued in appeals designated by the court as CV appeals. The court uses the CV designation for a subset of civil cases designated by the Superior Court as Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts, and Vehicle Cases. The CV designation does not include cases coming directly to the court from agencies, family cases, probate cases, special-proceedings cases, tax cases, and bar-discipline cases. It is therefore

ORDERED that, effective August 1, 2021, each unsealed brief filed in a CV appeal shall comply with the following requirements.

1. The party filing the brief must redact all personal identifiers listed in Super. Ct. Civ. R. 5.2(a) (attached).

2. The party filing the brief must also ensure that the brief (a) does not contain any information revealing the identity of an individual receiving mental-health services; (b) does not contain any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services; (c) does not contain 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 (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); (d) uses initials when referring to victims of sexual offenses; and (e) does not contain any other information required by law to be kept confidential or protected from public disclosure.

3. The following procedural provisions in Super. Ct. Civ. R. 5.2 are also applicable: R. 5.2(d) (court may order filing of unredacted brief under seal), 5.2(e) (court may enter protective orders), 5.2(g) (reference lists), 5.2(h) (waiver of privacy protection), and 5.2(i) (responsibility to redact rests solely with person or entity making filing).

4. Where redaction is necessary to comply with the foregoing requirements, the party filing the redacted brief may also file an unredacted brief under seal. Where necessary for the court’s understanding of the brief, an unredacted and sealed brief must be filed. The party need not seek leave of the court to file an unredacted brief under seal.

5. *The party filing the brief must complete and file the Redaction Certificate Disclosure Form indicating that the person has reviewed Super. Ct. Civ. R. 5.2 and this order and that the brief complies with the applicable requirements of those provisions. The form must be attached to the brief. (AMENDED AS OF NOVEMBER 8, 2021).*

6. Any appendix must be filed separately from the brief and need not be redacted. Appendices will not be made electronically available during this pilot project.

7. This order does not apply to sealed cases or to briefs filed entirely under seal.

**PER CURIAM**

## **Rule 5.2. Privacy Protection for Filings Made with the Court**

(a) REDACTED FILINGS. Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of an individual known to be a minor; and a financial-account number, 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.

(b) [Omitted].

(c) [Omitted].

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) ADDITIONAL UNREDACTED FILING UNDER SEAL.

(1) *Motion to File an Unredacted Copy Under Seal.* Except as provided in Rule 5.2(f)(2), a person who makes a redacted filing and wishes to file an additional unredacted copy must file a motion to file an unredacted copy under seal. If granted, the court must retain the unredacted copy as part of the record.

(2) *Name Change Applications.* A person filing an application under Rule 205 (name change) must file an unredacted copy of the application under seal.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

(i) RESPONSIBILITY TO REDACT. The responsibility for redacting these personal identifiers rests solely with the person or entity making the filing.

## COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 5.2* except that: 1) section (a) has been modified to require protection of driver's license and non-driver's license identification card numbers; 2) section (a) requires parties to redact entirely social-security numbers and taxpayer-identification numbers, allowing only the acronyms "SS#" and "TID#," respectively; 3) section (b) has been omitted, removing exemptions to provide greater protection for identifiers; 4) section (c) has been omitted as inapplicable; 5) section (f) has been modified to require a motion where a person wishes to file an unredacted copy except that a person filing a name change application must file an unredacted version under seal; and 6) section (i) was added to make clear that the clerk is not required to review filings for compliance with this rule.

The modifications to section (a) were made because the Superior Court was concerned that filing portions of social-security numbers and taxpayer-identification numbers might increase the risk of identity theft by making the critical portions of these numbers readily accessible on the internet.

As used in this rule, the phrase "financial-account number" is intended to include credit and debit card numbers.

A party may move to seal documents or other information not covered under this rule by using the procedures described in Rule 5-III.



## **18 U.S.C. § 2265. Full faith and credit given to protection orders**

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(d) Notification and Registration.—

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(3) Limits on internet publication of registration information.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

## **18 U.S.C. § 2266. Definitions**

In this chapter:

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(5) Protection Order.—The term “protection order” includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

# District of Columbia 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

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21-CV-735

Case Number(s)

1/3/2022

Date