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April 8, 2014

VIA U.S. MAIL

Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices of the Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Nativi v. Deutsche Bank National Trust Company, et al.*
Supreme Court No. S216911
Court of Appeal No. H037715
Santa Clara Sup. Ct. Case No. CV158254
Our Client: United Trustees Association ("UTA")

Request of United Trustees Association that Review Be Granted

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of the United Trustees Association ("UTA"), the undersigned respectfully requests this Court grant review in the Court of Appeals, 6th District, decision in *Nativi v. Deutsche Bank National Trust Company*¹ to resolve crucial issues concerning interpretation and application of the Protecting Tenants Against Foreclosure Act;² specifically, whether all terms, rights, and obligations of an unrecorded junior lease survive foreclosure by a senior deed of trust or whether the junior lease is extinguished, but the tenant has a limited statutory right of occupancy. Prior to the *Nativi* decision,³ foreclosure by a senior deed of trust extinguished junior leasehold interests. With its interpretation of the PTFA, the Court of Appeal in *Nativi* substantially impairs all senior deeds of trust entered into prior to January 1, 2013. The *Nativi* court went beyond the language of the PTFA, which provided only a limited right to occupancy in a tenant under a junior lease, to hold all of the terms, rights, and obligations of an unrecorded junior lease survive foreclosure by a senior deed of trust. The decision will have a negative, destabilizing affect on the mortgage and lending industry in California.

¹ *Nativi v. Deutsche Bank National Trust Company* (2014) 223 Cal.App.4th 261.

² Protecting Tenants Against Foreclosure Act ("PTFA"), Publ.L. 111-22, Div. A, Title VII, §§ 702-704, May 20, 2009, 123 Stat. 1660.)

³ And the adoption of Calif. Code of Civ. Proc. § 1161b on January 31, 2013.

The United Trustees Association (formerly known as the California Trustees Association) is a non-profit educational association. The members of UTA are comprised of trustees under deeds of trust secured by real property in California (i.e., both independent trustees and those affiliated with lenders) as well as members that provide support services in the nonjudicial foreclosure process, such as legal newspapers, title companies, posting and publishing services, and attorneys. UTA's members provide reconveyance, nonjudicial foreclosure services and other default services for nearly all lenders in the California real estate market. Its members are vitally interested in the outcome of this case because many of the lender clients and members regularly make, arrange and/or service loans which are foreclosed upon and acquired by the lenders.

A decision by this Court on the interpretation and application of the PTFA raised in *Nativi v. Deutsche Bank National Trust Company* will provide needed guidance in determining whether a *bona fide* junior lease survives a foreclosure sale to create a landlord-tenant relationship, with all of the accompanying rights, duties, and obligations, with the purchaser at the foreclosure sale. The breath of *Nativi* in establishing such a landlord-tenant relationship has the potential to threaten the stability of the residential real estate market and lending in California. In *Nativi*, the Court of Appeal found the immediate successor in interest in a foreclosed property takes title subject to a *bona fide* junior lease for the duration of its term, subject to the limited authority in the successor to terminate the lease. Under *Nativi* the immediate successor in interest of a foreclosed property, now deemed to be in a landlord-tenant relationship with tenants occupying under a junior lease, is bound to all terms of the lease and subject to the common law and statutory duties of a landlord.

This broad interpretation of the PTFA constitutes an impairment of all senior deeds of trust entered into California between January 1, 2009 and December 31, 2013. Before the adoption of California Code of Civil Procedure § 1161b, lenders entered into senior deeds of trust with the contractual expectation that unrecorded junior leases would extinguish in the event of foreclosure. Under the PTFA a tenant occupying a foreclosed property under a junior lease was given a limited right of continued occupancy. An argument can be made this limited occupancy right was reasonable and necessary in light of the foreclosure crisis this nation recently experienced. However, this legislative purpose is not served by judicially imposing a new contract between the junior tenant and the purchaser at a foreclosure and binding the purchaser at a foreclosure sale with all of the common law and statutory duties of a landlord.

Hon. Chief Justice Tani Cantil-Sakauye and Associate Justices
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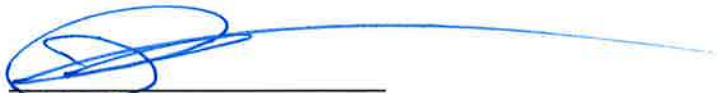
The overly broad decision may lead to a proliferation in lawsuits for breach of the lease imposed upon purchasers at a foreclosure sale. With no prior knowledge, a purchaser at a foreclosure sale now may be burdened with a lease with unlimited combinations of potential contractual obligations ranging from unilateral renewal rights to mandatory substantial improvements to the property. Instead of simply permitting a junior tenant to occupy the foreclosed property for the remainder of the lease term, a purchaser at a foreclosure sale now must face potential and unnecessary lawsuits for breach of lease. The foreclosing party also may face potential claims for indemnity and contribution.

The United Trustees Association, therefore, urges the Court to grant review.

Very truly yours,

ADLESON, HESS & KELLY, APC

By:



Phillip M. Adleson

PMA/tlc

Rosario Nativi v. Deutsche Bank National Trust.
Court of Appeal Case No. H037715

PROOF OF SERVICE

I am employed in Santa Clara County. I am over the age of 18 and not a party to this action. My business address is 577 Salmar Avenue, 2nd Floor, Campbell, CA 95008.

On April 8, 2014, I served the foregoing document(s), described as:

April 8, 2014 Letter to Hon. Chief Justice Re: Request of United Trustees Association that Review Be Granted

by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

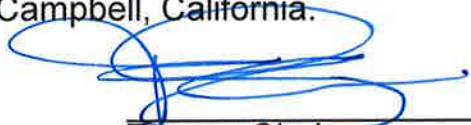
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BY U.S. MAIL. I deposited such envelope in the mail at San Diego, California. The envelopes were mailed with postage thereon fully prepaid.

I am readily familiar with Adleson, Hess & Kelly's a PC practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Campbell, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on April 8, 2014 at Campbell, California.



Tammy Clark

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