

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAPIDYNE CORPORATION, A
FOREIGN CORPORATION,
Appellant,
vs.
THOMAS J. LOCKE, AN INDIVIDUAL;
AND JENNIFER L. LOCKE, AN
INDIVIDUAL,
Respondents.

No. 64159

FILED

MAR 12 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a quiet title action.¹ Eighth Judicial District Court, Clark County; Susan Scann, Judge.

Having considered the parties' arguments and the record on appeal, we conclude that the district court erred in ruling, as a matter of law, that respondents held title to the subject property free and clear of any interest asserted by appellant. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment). In particular, while we agree with the district court's findings that IndyMac and the former homeowners were not notified of the sheriff's sale,² we disagree with the district court's

¹We direct the clerk of the court to modify the caption on the docket for this case to conform to the caption on this order, which reflects that appellant is a foreign corporation.

²Appellant suggests that the district court should have afforded appellant the opportunity to conduct discovery on the issue of whether IndyMac and the former homeowner were provided with notice of the sheriff's sale. To the extent that appellant made such a request to the district court, the district court was within its discretion to deny the

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conclusion that the lack of notice in that regard rendered the sheriff's sale altogether void. See Restatement (Third) of Property: Mortgages § 7.1 (1997) (compiling cases that have addressed similar lack-of-notice issues in the context of judicial foreclosure sales); 55 Am. Jur. 2d Mortgages §§ 799, 802 (2009) (same).

We also disagree with the district court's alternate conclusion that appellant's interest in the subject property was extinguished by virtue of IndyMac's subsequent trustee's sale. In particular, in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014), this court concluded that a common-interest community association's NRS 116.3116(2) superpriority lien has true priority over a first security interest. Again, while we agree that the sheriff's sale was not conducted properly and therefore did not extinguish IndyMac's security interest, a factual issue remains as to whether the lien that was foreclosed at the sheriff's sale was a superpriority lien.³ Because

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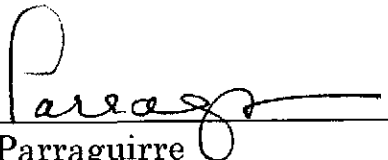
request. See *Choy v. Ameristar Casinos, Inc.*, 127 Nev. ___, ___, 265 P.3d 698, 700 (2011) (reviewing a district court's decision to deny a continuance of a summary judgment motion for an abuse of discretion and recognizing that a request for a continuance within a party's summary judgment opposition does not substantially comply with NRCP 56(f)).

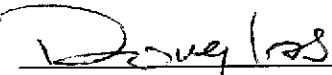
³Respondents suggest that no lien was foreclosed at the sheriff's sale. We disagree. The September 1, 2011, judgment that authorized the sheriff's sale clearly indicated that a portion of the judgment was for "unpaid assessments," which, under NRS 116.3116, are part of a common-interest community association's lien. Cf. *SFR Investments*, 130 Nev. at ___, 334 P.3d at 418 (recognizing that unpaid monthly "dues will typically comprise most, perhaps even all, of the HOA lien"); NRS 40.430(4) (recognizing that a judicial foreclosure sale "must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated").


appellant's interest in the subject property may not have been extinguished by the subsequent trustee's sale if the lien that was foreclosed at the sheriff's sale was superior to IndyMac's security interest, this factual issue is "material" in the sense that summary judgment was improper. See *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (recognizing that the "substantive law" dictates which factual disputes are "material" for purposes of summary judgment); see also Restatement (Third) of Property: Mortgages § 7.1, cmt. b (1997) (discussing the legal implications that arise when a junior lienholder is not made a party to a judicial foreclosure action); 55 Am. Jur. 2d Mortgages §§ 799, 802 (2009) (same).

In sum, because neither of the district court's two bases for summary judgment justify the conclusion that respondents, as a matter of law, hold title to the subject property free of appellant's asserted interest, we conclude that summary judgment was improper. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Susan Scann, District Judge
Stovall & Associates
Marquis Aurbach Coffing
Eighth District Court Clerk