

IN THE SUPREME COURT OF THE STATE OF NEVADA

MACKENSIE FAMILY, LLC AS  
TRUSTEE OF THE BEL AIR DRIVE  
TRUST,  
Appellant,  
vs.  
WELLS FARGO BANK, N.A. F/K/A  
WORLD SAVINGS BANK,  
Respondent.

No. 65696

**FILED**

**JAN 22 2016**

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

*ORDER OF REVERSAL AND REMAND*

Appeal from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

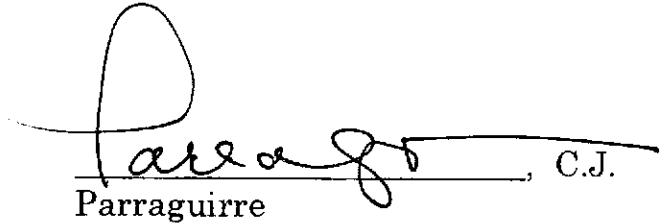
Respondent Wells Fargo's predecessor in interest loaned home buyers \$300,000, secured by a deed of trust. The property was also subject to Las Vegas International Country Club Estates Homeowner's Association (HOA) assessments. The homeowners defaulted on their loan and HOA assessments, and the HOA foreclosed on its lien. Appellant Bel Air Drive Trust (BADT) purchased the property at the resultant foreclosure sale and then brought an action in the district court to quiet title. The district court granted summary judgment in favor of Wells Fargo, concluding that BADT took the property subject to Wells Fargo's interest because NRS 116.3116 creates a limited superpriority lien for nine months of HOA assessments such that the HOA had only a payment priority. BADT appealed.

This court reviews a district court order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Id.* The district court's conclusion of law contradicts our holding in *SFR Investments Pool 1 v. U.S. Bank*, providing that NRS 116.3116(2) establishes not only a payment priority, but "gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014).<sup>1</sup> Therefore, the district court's grant of summary judgment was improper. Moreover, this case cannot be resolved on appeal because a genuine issue of material fact remains regarding whether the foreclosure was proper. Specifically, the district court did not make a finding as to whether actual notice was received by Wells Fargo.

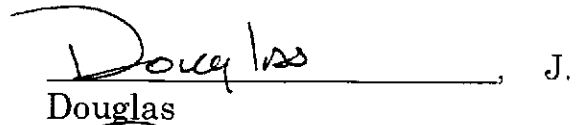
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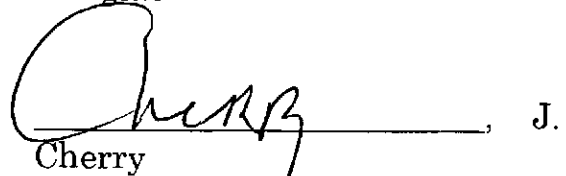
<sup>1</sup>We note that we issued *SFR* after BADT filed its notice of appeal, but before briefing was completed.

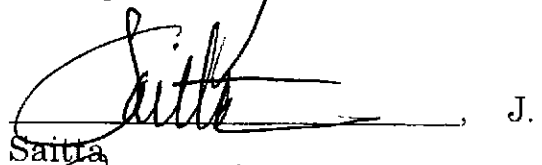
We therefore ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

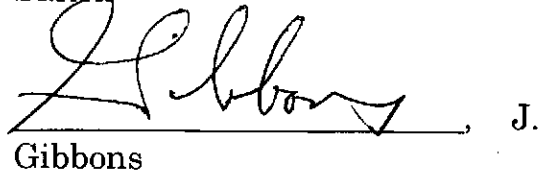
 C.J.  
Parraguirre


 J.  
Hardesty

 J.  
Douglas

 J.  
Cherry

 J.  
Saitta

 J.  
Gibbons

 J.  
Pickering

cc: Hon. Ronald J. Israel, District Judge  
Kerry P. Faughnan  
Greene Infuso, LLP  
David J. Merrill, P.C.  
Eighth District Court Clerk