IN THE SUPREME COURT OF THE STATE OF NEVADA

SELECT PORTFOLIO SERVICING, INC., AS SERVICING AGENT FOR U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST, SERIES NC 2005-HE8, ASSET BACKED PASS-THROUGH CERTIFICATES SERIES NC 2005-HE8,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 68009

FILED

SEP 30 2016

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 order granting a motion to dismiss in a judicial foreclosure and quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Having considered the parties' arguments and the record, we conclude that the district court abused its discretion in denying appellant leave to file its proposed second amended complaint (SAC) on the ground that granting leave would have been futile. *See Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993) (reviewing for an abuse of discretion a district court's denial of leave to amend); *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev., Adv. Op. 42, 302 P.3d 1148, 1152 (2013) (observing that leave to amend a complaint should be denied if the proposed amendment would be futile but otherwise recognizing the longstanding principle that "leave to amend a complaint shall be 'freely

given when justice so requires'" (quoting NRCP 15(a)); *see also Nutton v. Sunset Station, Inc.*, 131 Nev., Adv. Op. 34, 357 P.3d 966, 975 (Ct. App. 2015) ("'[R]ule 15's policy of favoring amendments to pleadings should be applied with extreme liberality and amendment is to be liberally granted where . . . the plaintiff may be able to state a claim'" (quoting *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987))); *cf. Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 421 (6th Cir. 2000) ("The test for futility . . . does not depend on whether the proposed amendment could potentially be dismissed on a motion for summary judgment; instead, a proposed amendment is futile only if it could not withstand a [Federal] Rule 12(b)(6) motion to dismiss."); *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995) (citing 6 Charles A. Wright et al., Federal Practice and Procedure § 1487, at 643 & n.26 (1990), for same proposition); *Glick v. Koenig*, 766 F.2d 265, 268 (7th Cir. 1985) (same).

Here, we agree with appellant that its SAC sufficiently alleged (1) the superpriority portion of the HOA's lien had been satisfied at the time of the foreclosure sale[1]; (2) the sale was conducted in an unfair and commercially unreasonable manner based on a combination of the low sales price, inadequate notices, and confusion regarding which portion of the HOA's lien was being foreclosed; and (3) respondent was not a bona fide purchaser. Because one or a combination of these allegations, if true, could entitle appellant to equitable quiet title relief, the district court

[1]Although respondent contends that only the deed of trust beneficiary can pay off the superpriority portion of the HOA's lien, it provides no authority to support that contention. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that it is a party's responsibility to present cogent arguments supported by relevant authority).

abused its discretion in denying appellant leave to file its SAC based on futility. *Nutton*, 131 Nev., Adv. Op. 34, 357 P.3d at 975; *Halcrow*, 129 Nev., Adv. Op. 42, 302 P.3d at 1152; *Allum*, 109 Nev. at 287, 849 P.2d at 302; *cf. Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev., Adv. Op. 5, 366 P.3d 1105, 1114 (2016) (observing that a quiet title claim is equitable in nature and that, as such, a presiding court "must consider the entirety of the circumstances that bear upon the equities" in fashioning the appropriate relief). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

Parraguirre, C.J.

Hardesty, J.

Pickering, J.

cc: Hon. Kerry Louise Earley, District Judge
Wright, Finlay & Zak, LLP/Las Vegas
Kim Gilbert Ebron
Eighth District Court Clerk

[2]We decline to consider appellant's arguments that were raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).