

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RESOURCES GROUP, LLC, AS
TRUSTEE OF THE ELEGANTE WAY
TRUST,
Appellant,
vs.
CITIMORTGAGE, INC., A NEW YORK
CORPORATION,
Respondent.

No. 69793

FILED

MAY 05 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER REVERSING AND REMANDING

Appellant Resources Group, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Respondent Citimortgage, Inc., held a first deed of trust on the subject property, which Resources Group purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116 after the homeowner failed to pay HOA assessments. See NRS 116.3116-.31168; *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. ___, ___, 388 P.3d 970, 971 (2017) (recognizing that the statutory scheme grants HOAs superpriority liens for unpaid assessments and allows HOAs to nonjudicially foreclosure on those liens). After Resources Group purchased the property, it filed a complaint, as is pertinent here, to quiet title to the property, which Citimortgage opposed. The district court ultimately granted summary judgment in Citimortgage's favor and this appeal followed.


In granting summary judgment, the district court determined that no questions of material fact existed that the HOA failed to effectuate


service of the notice of default and election to sell on Citimortgage or its predecessor-in-interest as required by statute, and, thus concluded that Citimortgage's first deed of trust was not extinguished by the HOA foreclosure sale. But in granting summary judgment on this basis, the district court relied on a misstatement of the law, as NRS 116.31163 only requires that the notice of default and election to sell be *mailed* to the required parties, not that it actually *be received* by the required parties. See NRS 116.31163 (2015) (requiring the notices to be mailed but making no requirement that the party mailing the notices ensure that they are actually received); *Turner v. Dewco Servs., Inc.*, 87 Nev. 14, 16, 479 P.2d 462, 464 (1971) (holding that a party complied with a foreclosure statute requiring the mailing of notices when it properly mailed the notices, despite those notices being returned as undeliverable, because the statute did "not require proof that the notice be received"). Accordingly, this was an improper basis to grant summary judgment on Resource Group's quiet title claims.


Furthermore, in *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, ___, 366 P.3d 1105, 1114 (2016), the Nevada Supreme Court recognized that a quiet title action is equitable in nature and, as such, a court "must consider the entirety of the circumstances that bear upon the equities." In particular, the supreme court recognized that the parties must develop a record in the district court regarding certain issues, including whether the sale was commercially reasonable and whether a bona fide purchaser will be harmed by setting the sale aside. *Id.* at 1113-14, 1116. And here, it is possible that Citimortgage's arguments regarding a lack of notice may bear upon the equities in this matter.

Because the parties failed to develop an adequate record below and because the district court granted summary judgment in favor of Citimortgage based upon an incorrect conclusion of law and without addressing how the noted issues bore upon the equities, we conclude that summary judgment in Citimortgage's favor was not proper. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Janet Trost, Settlement Judge
Kerry P. Faughnan
Akerman LLP/Las Vegas
Wolfe & Wyman LLP
Eighth District Court Clerk

¹Citimortgage argues that summary judgment was also proper because NRS Chapter 116's statutory scheme is unconstitutional. In light of the supreme court's opinion in *Saticoy Bay*, 133 Nev. ___, 388 P.3d 970, Citimortgage's constitutional challenges to NRS Chapter 116 lack merit.