

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

U.S. BANK, N.A., SUCCESSOR
TRUSTEE TO BANK OF AMERICA,
N.A., SUCCESSOR BY MERGER TO
LASALLE BANK, N.A., AS TRUSTEE
TO THE HOLDERS OF THE ZUNI
MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES SERIES 2006-OA1,
Appellant,
vs.
5316 CLOVER BLOSSOM CT. TRUST,
Respondent.

No. 68915

FILED

JUN 30 2017

ELIZABETH A. BROWN
CLERK OF THE COURT
BY *A. Wilcox*
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

U.S. Bank N.A. appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

U.S. Bank held a first deed of trust on the subject property, which respondent 5316 Clover Blossom Court Trust 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 purchasing the property, Clover Blossom filed a complaint, as is pertinent here, to quiet title to the property, which U.S. Bank opposed. Both parties then moved for summary judgment. The district court ultimately granted summary judgment in Clover Blossom's

favor, finding that the sale was conducted properly and that the HOA's foreclosure on its superpriority lien extinguished U.S. Bank's deed of trust on the property. Additionally, the district court denied U.S. Bank's NRCP 56(f) motion which sought additional time for discovery in order to procure evidence demonstrating, amongst other things, how the foreclosure sale was conducted and whether it was done in a manner that artificially lowered the sale price of the property. This appeal followed.

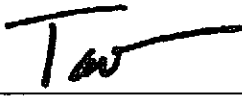
In *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, ___, 366 P.3d 1105, 1114 (2016), the Nevada Supreme Court recognized that a quiet title action is equitable in nature and, as such, a court must consider the "entirety of the circumstances that bear upon the equities." In particular, the supreme court discussed the following factors as potentially bearing on the equities of an HOA's foreclosure sale: (1) a grossly inadequate foreclosure sale price; (2) a showing of fraud, unfairness, or oppression leading to the foreclosure sale; (3) the extent to which a complaining party's inaction led to the HOA's foreclosure sale; and (4) the presence of a bona fide purchaser. *Id.* at ___, 366 P.3d at 1112-16. The supreme court further noted that a deed of trust beneficiary's tender of the purported superpriority portion of an HOA's lien is a relevant consideration when determining whether an HOA foreclosure sale extinguishes the deed of trust. *Id.* ___, 366 P.3d at 1110.


Here, the district court granted summary judgment in favor of Clover Blossom without properly addressing how the HOA's rejection of the tender that was made by U.S. Bank bore upon the equities. Thus, we conclude that summary judgment in Clover Blossom's favor may not have been proper. On remand, the district court should reconsider U.S. Bank's

request for an NRCP 56(f) continuance in light of *Shadow Wood*.
Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Akerman LLP/Las Vegas
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk

¹U.S. Bank also argues that 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, the constitutional challenges to NRS Chapter 116 lack merit. And to the extent U.S. Bank asks this court to adopt a rule that a grossly unreasonable sale price, in and of itself, can be enough to warrant setting aside a foreclosure sale, we decline to do so as supreme court precedent is clear in holding that a low sale price "is not in itself a sufficient ground for setting aside a trustee's sale legally made." *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal quotation marks omitted); see also *Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1111 (citing *Golden* with approval).