

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WELLS FARGO BANK, N.A.,  
SUCCESSOR BY MERGER TO WELLS  
FARGO BANK MINNESOTA, N.A.,  
F/K/A NORWEST BANK MINNESOTA,  
N.A., SOLELY AS TRUSTEE FOR  
STRUCTURED ASSET MORTGAGE  
INVESTMENTS II INC. BEAR  
STEARNS MORTGAGE FUNDING  
TRUST 2007-AR5, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
2007-AR5,  
Appellant,  
vs.  
NEVADA NEW BUILDS, LLC,  
Respondent.

No. 70523

**FILED**

APR 17 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., f/k/a Norwest Bank Minnesota, N.A., solely as trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR5, Mortgage Pass-Through Certificates, Series 2007-AR5, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Respondent Nevada New Builds, LLC (NNB), purchased the subject property at a homeowners' association (HOA) foreclosure sale. NNB then filed an action for quiet title, asserting that the foreclosure sale extinguished Wells Fargo's deed of trust encumbering the subject property. The parties engaged in litigation, including a separate action filed by Wells Fargo that was later consolidated with NNB's action. Eventually, the

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parties filed competing motions for summary judgment on this issue. The district court found in favor of NNB, granting it quiet title to the subject property free from any encumbrances and dismissing Wells Fargo's counterclaims. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *see also Costello v. Casler*, 127 Nev. 436, 439, 254 P.3d 631, 634 (2011). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Initially, Wells Fargo argues that NRS chapter 116 is facially unconstitutional and violates the mortgage lender's due process rights. Additionally, Wells Fargo argues that the *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014) decision, that found that an HOA foreclosure sale extinguishes a first security interest on a property, should not be applied retroactively. The Nevada Supreme Court has already determined that the statutes are constitutional, that they do not implicate a mortgage lender's due process rights, and that the *SFR Investments* decision applies retroactively. *See Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. \_\_\_, \_\_\_, 388 P.3d 970, 973-74 (2017) (holding that the superpriority lien statutes do not implicate due process); *K&P Homes v. Christiana Trust*, 133 Nev. \_\_\_, \_\_\_, 398 P.3d 292, 295 (2017) (declaring that the holding of *SFR Investments* applies


retroactively). As such, Wells Fargo's arguments on these issues are unpersuasive, and the district court's grant of summary judgment was proper.

Wells Fargo next argues that the district court abused its discretion in denying its request for a continuance under NRCP 56(f) for additional time to conduct discovery. This court reviews an order denying a request for a continuance under NRCP 56(f) for an abuse of discretion. *See Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011); *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Based on our review of the record, we conclude that the district court was within its discretion in denying Wells Fargo's request. While the declaration provided in support of its request listed several topics for discovery, the statement failed to specify what it expected that discovery to yield that would generate genuine issues of material fact to defeat summary judgment. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011) (“[A] motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact.” (alteration in original) (internal quotation marks omitted)).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michelle Leavitt, District Judge  
Janet Trost, Settlement Judge  
Ballard Spahr LLP/Las Vegas  
Ballard Spahr LLP/Washington DC  
Joseph Y. Hong  
Eighth District Court Clerk