IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAISY TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS SUCCESSOR-IN-INTEREST TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2006-AR8, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR8,
Respondent.

No. 70804

FILED

APR 09 2018

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

ORDER OF AFFIRMANCE

Daisy Trust appeals from a district court's summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Respondent Bank of New York Mellon (BNYM) held a first deed of trust on a property, which appellant Daisy Trust purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. Daisy Trust filed suit against BNYM and others to establish that Daisy Trust now held the property free and clear of any encumbrances such as BNYM's deed of trust. Both Daisy Trust and BNYM filed motions for summary judgment. The district court denied Daisy Trust's motion and granted summary judgment in favor of BNYM. In granting summary judgment, the district court determined that no questions of material fact existed in that the lien foreclosed upon was not a superpriority lien because it did not contain unpaid assessments due within the nine months immediately preceding institution of an action to enforce

the lien, pursuant to NRS 116.3116(2) (2013) (amended 2015). 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). 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. *Id.* 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.

On appeal, Daisy Trust argues that, while there were no unpaid assessments at the time of the recording of the Notice of Lien, the Notice of Lien referenced the potential of future unpaid assessments being included in the lien. As such, because at the recording of the Notice of Default and Election of Sale unpaid assessments had accrued, the lien had superpriority status. BNYM counters to say that the superpriority amount is determined under statute at the time of the filing of the notice of lien, at which time there were no unpaid assessments to give Daisy Trust's lien superpriority status.

The statute in effect during this foreclosure action stated that the amount of a superpriority lien would be equal to "assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116(2) (2013) (amended 2015). And the recording of the notice of lien initiates an action to enforce the lien. *See*

SFR Investments Pool 1, LLC v. U.S. Bank, 130 Nev. 742, 754-755, 334 P.3d 408, 417 (2014) (citing with approval the Nevada Real Estate Division's advisory opinion that a notice of lien initiates an action for purposes of NRS 116.3116(2)). Thus, here, the total of the purported superpriority lien would be equal to the amount of unpaid assessments accrued in the nine months prior to the recording of the Notice of Lien. The parties do not dispute that no past due assessments existed when the Notice of Lien was recorded which initiated the subject foreclosure. Therefore, there was no superpriority lien to foreclose upon and the foreclosure sale here could not extinguish BNYM's first deed of trust.

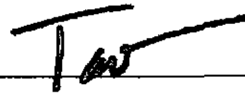
Daisy Trust's argument that the lien included reference to future unpaid assessments which should convert the lien into a superpriority lien where assessments became due after the notice of lien was recorded, but before the notice of default and election to sell, is without merit. The relevant statute now states that a superpriority lien is "equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded." NRS 116.3116(3)(b) (2015). This amendment specifically addressed the assessments to be included in creating a superpriority lien and changed the time for calculating a superpriority lien from the notice of lien to the notice of default and election to sell. Based on this amendment, it cannot be said that the assessments that became due following the notice of lien create a superpriority lien under the 2013 version of NRS 116.3116(2). *See In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (noting that

amendment to a statute is evidence of what the legislature originally intended).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_______________, C.J.
Silver



_______________, J.
Tao

_______________, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
Nathaniel J. Reed, Settlement Judge
Law Offices of Michael F. Bohn, Ltd.
Smith Larsen & Wixom
Eighth District Court Clerk

[1]In light of our resolution of this matter, we need not reach appellant's remaining arguments.