IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HOA CAPITAL ADVISORS, LLC, A FOREIGN LIMITED LIABILITY COMPANY,
Appellant,
vs.
U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST,
Respondent.

No. 71063

ORDER OF REVERSAL AND REMAND

HOA Capital Advisors, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

U.S. Bank filed a quiet title action below against HOA Capital, a subsequent purchaser of property to which U.S. Bank claims an interest via a first deed of trust. HOA Capital believes it holds title free from U.S. Bank's encumbrance, as the prior owner secured title via a homeowners' association (HOA) foreclosure sale pursuant to NRS 116.3116 *et seq.* Immediately after HOA Capital answered the complaint, and before any formal discovery was completed, U.S. Bank moved for summary judgment claiming that the granting language of the foreclosure deed passed title to HOA Capital's predecessor-in-interest for only the interest secured by the non-priority portion of the foreclosed HOA lien, and not U.S. Bank's first deed of trust. The district court granted U.S. Bank's motion for summary judgment over HOA Capital's opposition. This appeal followed.

18-900432

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.*

HOA Capital argues on appeal that the language of the foreclosure deed does not represent the intent of the parties involved in the foreclosure sale. In making this argument, HOA Capital refers to the recitals in the foreclosure deed, which discuss the notice of delinquent assessments and the payment of a superpriority lien as conditions precedent of the sale, as well as a notice of sale that indicated the sale would include the full amount of the HOA lien, not just the non-priority portion, to show that the HOA foreclosure sale was meant to extinguish all junior interests.[1]

In response, U.S. Bank argues that the granting language of the foreclosure deed is clear and controlling. U.S. Bank noted that HOA Capital did not include any prior recorded documents that might establish a superpriority lien sale in its opposition to summary judgment below, and that the deed is viewed as the culmination of the sale and, thus, the intent

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[1]HOA Capital also asserts that the summary judgment below should be overturned to allow it to counterclaim for judicial reformation of the deed. However, this issue was not raised below, and is therefore not considered upon appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

of the parties. U.S. Bank also emphasized that the foreclosure agent was an agent of the foreclosing HOA, and therefore, the language of the deed must be recognized as the intent of the foreclosing HOA.

"It is the intent of the parties to the deeds which . . . must determine the nature and extent of the estate conveyed . . . ." *City Motel, Inc. v. State ex rel. State Dep't of Highways*, 75 Nev. 137, 141, 336 P.2d 375, 377 (1959). "The intentions of the parties are determined from all the circumstances surrounding the transaction." *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968 (1982). Thus, considerations of intent include, but are not limited to, the language of the deed. *Dayton Valley Inv'rs, LLC v. Union Pac. R.R. Co.*, 664 F. Supp. 2d 1174, 1185 (D. Nev. 2009) (citing *Triplett v. David H. Fulstone Co.*, 109 Nev. 216, 849 P.2d 334 (1993).

Viewed in the light most favorable to HOA Capital, the non-moving party below, the language of the foreclosure deed is ambiguous. It states that the conveyance is for the interest held by the non-priority portion of the lien but also provides that the purchase satisfied the superpriority lien, creating multiple interpretations of the parties' intent for conveyance and what interest was foreclosed upon. Additionally, the notice of sale did not indicate that the lien amount was only for the non-priority section. *Cf. Laurent v. JP Morgan Chase, N.A.*, No. 2:14-cv-00080-APG-VCF, 2016 WL 1270992, at *7 (D. Nev. Mar. 31, 2016) (finding that circumstances such as an announcement prior to sale that the foreclosure was for the non-priority portion of the lien indicated that only the non-priority portion was to be foreclosed upon). As such, there exists a genuine issue of material fact as to the extent of the interest intended to be foreclosed and thereafter conveyed. With this question outstanding, it cannot be determined that the

foreclosure sale did not extinguish all junior interests. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 (stating that summary judgment is only appropriate when there is no genuine issue of material fact).

Accordingly, we

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

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Noggle Law PLLC
Tiffany & Bosco, P. A.
Eighth District Court Clerk