IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PIONEER AVE 201 TRUST,
Appellant,
vs.
THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, A NATIONAL ASSOCIATION; AND SEASIDE TRUSTEE, INC., A NEVADA CORPORATION,
Respondents.

No. 73134



*ORDER OF REVERSAL AND REMAND*

Pioneer Ave 201 Trust appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Pioneer purchased property as a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. Respondent The Bank of New York Mellon (BNYM) held a first deed of trust on the property. Pioneer filed suit against BNYM to establish that Pioneer now held the property free and clear of any encumbrances such as BNYM's deed of trust. The parties filed competing motions for summary judgment. The district court granted partial summary judgment in favor of BNYM, finding that the HOA did not comply with the notice requirements in NRS Chapter 116 and, therefore, the HOA sale was defective and did not extinguish BNYM's deed of trust. 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.

The single basis upon which the district court granted summary judgment here is that BNYM did not receive the notice of default pursuant to NRS 116.31163 and NRS 107.090. To determine sufficient notice pursuant to statute, the Nevada Supreme Court has said, "we examine whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language." *Schleining v. Cap One, Inc.*, 130 Nev. 323, 329, 326 P.3d 4, 8 (2014) (internal quotation marks omitted). In the context of notice requirements, this court, like the supreme court, therefore applies substantial compliance. *See id.* at 329-30, 326 P.3d at 8 (determining that, under NRS 107.095, the purpose of notifying interested parties in a party's default is met by substantial compliance).

Substantial compliance requires that the interest holder has actual knowledge and is not prejudiced. *See id.* at 330, 326 P.3d at 8; *see also Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 536, 245 P.3d 1149, 1155 (2010) (discussing notice requirements for mechanic's liens); *In re Estate of Ivester,* 812 P.2d 1141, 1145 (Ariz. Ct. App. 1991) (concluding in the context of an estate settlement that "[t]he general rule is that one having actual notice is not prejudiced by and may not complain of the failure to receive statutory notice"). The district court's order here did not adequately address substantial compliance. It failed to determine whether genuine issues of material fact exist as to respondent's actual knowledge of the

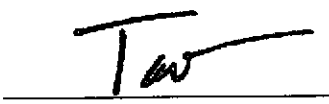
default and as to whether respondent was prejudiced by a lack of statutory notice (*i.e.*, that respondent's failure to save the property from foreclosure was a result of the lack of statutory notice). Without this analysis, summary judgment was improper.

Moreover, the parties have both sought to resolve competing claims to the subject property via the equitable claim of quiet title. *See Shadow Wood Homeowners' Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 58, 366 P.3d 1105, 1111 (2016). Sitting in equity requires the district court to consider the entirety of the circumstances that bear upon the equities. *See id.* at 63, 366 P.3d at 1114. And here, the district court failed to address whether Pioneer had any knowledge of the HOA's alleged non-compliance with the statutory notice provisions such that the equitable result of the district court's order was warranted. *See id.* at 64-66, 366 P.3d at 1115-16. Under the circumstances, it is unclear whether BNYM was entitled to the equitable relief granted. *See id.*

In light of the foregoing, 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: Chief Judge Linda Marie Bell, Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Allison R. Schmidt, Esq, LLC
Ayon Law, PLLC
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk