

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC,  
Appellant,  
vs.  
NV REAL PROPERTY, LLC,  
Respondent.

No. 71149

**FILED**

AUG 15 2018

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

*ORDER OF AFFIRMANCE*

Nationstar Mortgage, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Nationstar held a first deed of trust on a property which respondent NV Real Property, LLC (NVRP), purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. NVRP filed suit against Nationstar to establish that NVRP now held the property free and clear of any encumbrances such as Nationstar's deed of trust. The parties filed competing motions for summary judgment, and the district court granted summary judgment in favor of NVRP. 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.


To the extent that Nationstar argues against NRS Chapter 116's constitutionality, these arguments are unconvincing, and we cannot reevaluate *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. \_\_\_, 388 P.3d 970 (2017) (holding that NRS Chapter 116 does not violate the takings clause, does not implicate due process concerns, and is constitutional on its face). *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting stare decisis "applies a fortiori to enjoin lower courts to follow the decision of a higher court").

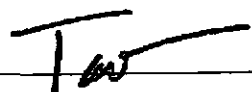
Likewise, the supreme court has determined that the courts must consider the entirety of the circumstances that bear upon the equities in an HOA foreclosure sale. *See Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 63, 366 P.3d 1105, 1114 (2016). To the extent Nationstar suggests that we consider setting aside a foreclosure on the gross inadequacy of the sales price alone, the supreme court has expressly rejected this position. *See id.* at 56, 366 P.3d at 1110. In so doing, we reject Nationstar's request that we adopt and apply outside authority on this point. Not only is the resort to such authority unnecessary, but precedent from our supreme court prevents us from doing so. *See Hubbard*, 514 U.S. at 720; *see, e.g., Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. \_\_\_, \_\_\_, 405 P.3d 641, 645 (2017) (determining that the commercial reasonableness standard applicable under the Uniform Commercial Code does not apply to HOA foreclosure sales of real property). As for Nationstar's arguments that summary judgment was improper as the foreclosure sale was commercially unreasonable, we are not persuaded by this argument.

Demonstration of an inadequate price at foreclosure is not enough to set aside a foreclosure sale. *See Shadow Wood*, 132 Nev. at 60, 366 P.3d at 1112. But the circumstances raised by Nationstar are inadequate to show fraud, unfairness, or oppression. *See id.* at 56, 366 P.3d at 1110. Nationstar primarily argues that the terms of the CC&Rs prevented the HOA trustee from foreclosing on a superpriority lien. But Nevada caselaw has already determined that CC&R clauses do not alter the applicability of NRS Chapter 116 to eliminate a first deed of trust. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-58, 334 P.3d 408, 418-19 (2014) (recognizing that NRS 116.1104 overrules mortgage protection clauses contained in CC&Rs); NRS 116.1104 (stating that NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as provided by the statute). Because a low price is insufficient alone, and Nationstar's argument do not otherwise show any indication of fraud, unfairness, or oppression, we determine that no genuine issue of material fact exists as to the commercial reasonableness in this foreclosure. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Therefore, our review of the record and all other arguments shows no genuine issue of material fact exists and summary judgment was proper. *See id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Kerry Louise Earley, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
Akerman LLP/Las Vegas  
The Law Office of Mike Beede, PLLC  
Eighth District Court Clerk