IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JPMORGAN CHASE BANK, N.A.,
Appellant,
vs.
SATICOY BAY LLC SERIES 7589
PERLA DEL MAR,
Respondent.

No. 72162

ORDER OF AFFIRMANCE

JPMorgan Chase Bank, N.A., appeals from a district court's summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

JPMorgan held a first deed of trust on a property which respondent Saticoy Bay LLC Series 7589 Perla Del Mar (Saticoy Bay) purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. Saticoy Bay filed suit against JPMorgan and others to establish that Saticoy Bay now held the property free and clear of any encumbrances such as JPMorgan's deed of trust. Both JPMorgan and Saticoy Bay filed motions for summary judgment. The district court denied JPMorgan's motion and granted summary judgment in favor of Saticoy Bay. 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

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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.

We first address JPMorgan's arguments that the HOA foreclosure was commercially unreasonable, and therefore void. In *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. ___, ___, 405 P.3d 641, 642 (2017), the supreme court determined that the "commercial reasonableness" standard applicable under the Uniform Commercial Code is inapplicable in the context of an HOA foreclosure sale of real property. Moreover, JPMorgan failed to make a showing of fraud, unfairness, or oppression to the district court in addition to a purported inadequate price at foreclosure as required by *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, 366 P.3d 1105, 1112 (2016), and its argument on appeal fails to address this issue. As such, JPMorgan's commercial reasonableness argument is not grounds to reverse the summary judgment.

Similarly, the supreme court ruled in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev. ___, 388 P.3d 970, 975 (2017), that the NRS Chapter 116 HOA foreclosure provisions do not implicate the lienholder's due process rights and are constitutional in application. Therefore, JPMorgan's arguments on these points also do not provide grounds to reverse the summary judgment.

Finally, with regard to JPMorgan's arguments that payments made on the delinquent homeowner's account satisfied the superpriority portion of the lien such that the foreclosure sale proceeded on a nonsuperpriority status, our review of the record shows no genuine issue of material fact exists and summary judgment was proper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. The payments made prior to the initiation of the action to foreclose, *i.e.*, the notice of lien, cannot be determined to

eliminate the subsequently created lien. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 754-55, 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)).[1] And the single credit to the HOA account following the initiated action would not fully eliminate the past due amount on the delinquent HOA dues that had accrued from the time of the last payment on the account. As such, our review of the record demonstrates that a superpriority lien existed upon which the HOA foreclosure proceeded properly. Additionally, JPMorgan has not made any other argument based upon equity to support reversing the district court. *See Shadow Wood Homeowners Ass'n*, 132 Nev. at ___, 366 P.3d at 1114-15 (requiring the court to consider the entirety of the circumstances that bear upon the equities). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

[1]NRS 116.3116(2) was amended in 2015 such that the relevant statute now states that the recording of notice of default and election to sell is the date from which the amount of the superpriority lien is calculated, instead of the institution of an action which has been determined to be the notice of lien. *See* NRS 116.3116(3) (2015). As these proceedings occurred prior to 2015, we consider the notice of lien the appropriate marker in accordance with *SFR Investments Pool 1*.

cc: Hon. Joseph Hardy, Jr., District Judge
Smith Larsen & Wixom
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk