

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 70653

FILED

APR 17 2017

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

ORDER OF AFFIRMANCE

Appellant Nationstar Mortgage, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Nationstar held a first deed of trust on the subject property, which respondent SFR Investments Pool 1, LLC, purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116 after the homeowner failed to pay HOA assessments. *See* NRS 116.3116-.31168; *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. ___, ___, 388 P.3d 970, 971 (2017) (recognizing that the statutory scheme grants HOAs superpriority liens for unpaid assessments and allows HOAs to nonjudicially foreclosure on those liens). After purchasing the property, SFR filed a complaint, as is pertinent here, to quiet title to the property, which Nationstar opposed. The district court ultimately granted summary judgment in SFR's favor, finding that the sale was conducted properly and that the HOA's foreclosure on its superpriority lien extinguished Nationstar's deed of trust on the property. This appeal followed.

Nationstar first argues that the statutory scheme allowing HOA foreclosures to extinguish first deeds of trust is facially unconstitutional because it allows parties like Nationstar to be deprived of their property without due process. However, as recognized by Nationstar in its reply brief, the Nevada Supreme Court's recent opinion in *Saticoy Bay* specifically addressed this argument and held that the statutory scheme does not implicate due process because no state actor is involved in the HOA's foreclosure of its superpriority lien. *See* 133 Nev. at ___, 388 P.3d at 972-973 (recognizing that for due process to apply a state actor must be involved and concluding that the nonjudicial foreclosure process in NRS Chapter 116 does not include any state actor, thus the statutory scheme does not violate due process). Accordingly, this argument does not provide a basis to overturn the grant of summary judgment in SFR's favor.¹

Nationstar next argues that the district court erred in granting summary judgment because issues of material fact remained regarding whether the HOA complied with the statutory requirements for foreclosure. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,

¹While recognizing that the *Saticoy Bay* decision made its facial challenge to the summary judgment moot, Nationstar also asserted in its reply brief that the statutory scheme was unconstitutional as applied to Nationstar in the underlying foreclosure sale. But, because Nationstar did not raise this argument in its opening brief and because it failed to cogently argue its as-applied challenge or support it with relevant authority, we decline to consider it. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (holding that arguments not raised in an opening brief are deemed waived); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider arguments that are not cogently argued or supported by relevant authority).

1029 (2005) (providing that summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law). Specifically, Nationstar asserts that the foreclosure deed's recitals that the sale complied with the statutes are not conclusive evidence of compliance. And because SFR relied exclusively on the recitals to prove that the foreclosure sale complied with the law, Nationstar argues that material questions of fact remain regarding whether the sale was properly completed, thus summary judgment quieting title in SFR's favor was inappropriate. *See id.* In support of its argument, Nationstar relies heavily on the Nevada Supreme Court's recent decision in *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, 366 P.3d 1105 (2016), arguing that the holding of that case rejected the notion that the recitals contained in an HOA foreclosure deed were conclusive evidence that the sale complied with the relevant statutes. We disagree.

In *Shadow Wood*, a bank foreclosed on a deed of trust but neither paid the HOA assessments as they became due nor paid the prior HOA assessments that remained liened against the property due to the prior owner's failure to pay and their superpriority status under NRS 116.3116. *Id.* at ___, 366 P.3d at 1107. The HOA thus proceeded to foreclose on its liens and sold the property to a third party at a foreclosure sale. *Id.* at ___, 366 P.3d at 1108. The bank moved to set aside the sale and the district court ultimately granted summary judgment in the bank's favor, set aside the sale, and vested title of the property back with the bank. *Id.* at ___, 366 P.3d at 1109.

On appeal from that decision, the supreme court recognized that NRS 116.31166(2) gives conclusive effect to HOA foreclosure deed

recitals stating that the foreclosure sale properly complied with NRS 116.31162 through NRS 116.31164's requirements such as default, notice, and publication of the notice of sale. *Id.* at ___, 366 P.3d at 1110. The supreme court went on to conclude, however, that the conclusive recitals did not prevent the courts from setting aside foreclosure sales based on equity principles such as fraud, oppression, or unfairness.² *Id.* at ___, 366 P.3d at 1111-12 (“[S]uch recitals do not defeat equitable relief in a proper case; rather, such recitals are conclusive, *in the absence of grounds for equitable relief.*” (internal quotation marks omitted)). And because the bank raised equitable challenges, which were supported by evidence, concerning fraud, oppression, and unfairness in the sale process, the supreme court determined that the recitals could not be used as conclusive evidence resolving those issues. *Id.* at ___, 366 P.3d at 1110. Thus, because the recitals were not conclusive as to the issues raised by the bank, genuine issues of material fact remained and the grant of summary judgment in favor of the purchaser was reversed. *Id.* at ___, 366 P.3d at 1112-14.


²Nationstar asserts that the recitals cannot be considered conclusive because it would allow parties such as the HOA in this case to falsely state that it provided the required notices, even if the party challenging the sale had evidence that the required notices were not sent. This is incorrect, however, as Nationstar's hypothetical scenario clearly lays out a claim for fraud, which would be an equitable challenge to the foreclosure sale that *Shadow Wood* states the recitals cannot conclusively resolve. 133 Nev. at ___, 366 P.3d at 1110. We note, however, that in discussing this hypothetical scenario, Nationstar never alleges that it has evidence that the deed recitals in the foreclosure deed at issue in this appeal were not sent—it only provided evidence that the notice was not in Nationstar's servicing system.


Rather than raise colorable equitable challenges to the foreclosure sale or point to evidence demonstrating fraud, oppression, or unfairness in the foreclosure sale as was the case in *Shadow Wood*,³ Nationstar argues that SFR failed to meet its burden on summary judgment to demonstrate that there were no genuine issues of material fact regarding the sale's compliance with the HOA foreclosure statutes. Without any equitable challenges, however, this argument fails as *Shadow Wood* provides that the recitals are conclusive evidence that the

³Nationstar does make one equitable argument—that the sale price was unfair because it was commercially unreasonable. Specifically, Nationstar asserts that the fact that the property sold for only eight percent of its value creates a genuine issue of material fact as to whether the sale was commercially reasonable or whether it was unreasonable and should be invalidated, thus precluding summary judgment. *See Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1112 (recognizing that a court has the authority to set aside a foreclosure sale based on the unfairness of the sale in a quiet title action). Sale price alone, however, is *never* enough to demonstrate that the sale was commercially unreasonable; rather, the party challenging the sale must also make a showing of fraud, unfairness, or oppression that brought about the low sale price. *See id.* (“[D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale”); *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982) (“Mere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression.”); *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (“[I]nadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee’s sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.”). And because Nationstar only argued that the sale price was commercially unreasonable without any additional evidence that fraud, oppression, or unfairness brought about that low sale price, this argument does not provide a basis to overturn the district court’s grant of summary judgment. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029 (reviewing orders granting summary judgment de novo).

HOA foreclosure lien statutes were complied with. *See id.* at ___, 366 P.3d at 1110, 1112 (providing that, so long as there are no grounds for equitable relief, the foreclosure deed recitals are conclusive evidence that the statutory requirements for HOA foreclosures were followed). And because the recitals were conclusive evidence, the district court did not err in finding that no genuine issues of material fact remained regarding whether the foreclosure sale was proper and granting summary judgment in favor of SFR. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029 (reviewing summary judgment orders de novo). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁴Because we conclude that Nationstar failed to properly raise any equitable challenges to the foreclosure sale, we need not address its argument that SFR was not a bona fide purchaser for value. *See Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1114 (only addressing the bank's argument that the purchaser at the foreclosure sale was not a bona fide purchaser for value as it related to the bank's requests for equitable relief).

cc: Hon. Douglas W. Herndon, District Judge
Akerman LLP/Las Vegas
Kim Gilbert Ebron
Eighth District Court Clerk