IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE ON BEHALF OF THE CERTIFICATEHOLDERS OF DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, SERIES 2007-BAR1,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 69437

FILED

JUL 11 2017

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

ORDER VACATING JUDGMENT AND REMANDING

HSBC Bank USA appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

HSBC 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 foreclose on those liens). Following SFR's purchase of the property, HSBC filed a complaint, as is pertinent here, to quiet title to the property. After SFR answered the complaint and filed counterclaims, the parties filed cross-motions for summary judgment. 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 HSBC's deed of trust on the property. This appeal followed.

HSBC first argues that the Nevada Supreme Court's September 18, 2014, *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, ___, 334 P.3d 408, 409 (2014), decision, which held that an HOA lien under NRS Chapter 116 is a true superpriority lien the foreclosure of which extinguishes the first deed of trust, should not be applied retroactively. Having considered HSBC's argument in this regard and SFR's responsive assertions, we conclude that retroactive application of the *SFR* decision is appropriate as it is interpreting a statute and therefore "is necessarily retroactive to the extent that it is applicable from the date of the [statute]'s inception, rather than from the date of [the *SFR*] decision." *MDC Rests., LLC v. Eighth Judicial Dist. Court*, 132 Nev. ___, ___, 383 P.3d 262, 267-68 (2016) (interpreting a constitutional amendment and concluding that, under the factors established in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106 (1971), *overruled in part by Harper v. Va. Dep't of Taxation*, 509 U.S. 86 (1993), the decision must apply retroactively because it was not creating the law, but simply "declar[ing] what the law is"). Thus, this argument does not provide a basis to reverse the grant of summary judgment in SFR's favor. We nonetheless conclude, however, that we must still remand this matter to the district court, based on the 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).

In *Shadow Wood*, the Nevada Supreme Court recognized that a quiet title action is equitable in nature and, as such, a court must

consider the "entirety of the circumstances that bear upon the equities." *Id.* at ___, 366 Nev. at 1114. In particular, the supreme court recognized that the parties must develop a record regarding, amongst other things, the impact of any applicable covenants, conditions, and restrictions (CC&Rs) on the foreclosure sale process.[1] *See id.* at ___, 366 P.3d at 1113. In addition, the supreme court recognized that whether the sale was commercially reasonable; whether a bona fide purchaser will be harmed by setting the sale aside; and an HOA's fraudulent or misleading statements regarding its superpriority lien are also issues that must be taken into account. *See id.* at ___, 366 P.3d at 1110, 1114, 1116.

Here, the district court granted summary judgment in favor of SFR without properly addressing how the CC&R's mortgage savings clause or the HOA's statement regarding its lien and the effect the foreclosure of that lien would have on the first deed of trust, bore upon the equities. Thus, we conclude that summary judgment in SFR's favor may not have been proper. Accordingly, we

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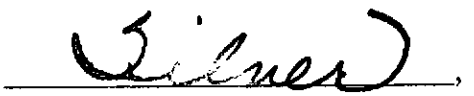
[1]In that vein, HSBC asserts that the CC&Rs include a mortgage savings clause specifically stating that the foreclosure of the HOA lien would not affect the first deed of trust. While we recognize that the Nevada Supreme Court has concluded that such CC&R provisions are superseded by NRS Chapter 116, such that a first deed of trust is still extinguished by a proper HOA foreclosure sale despite the existence of such a clause, *see SFR*, 130 Nev. at ___, 334 P.3d at 419 (concluding that a similar mortgage savings clause was not effective because NRS 116.1104 provides that, unless expressly stated, its provisions may not be varied by agreement or waived), HSBC nonetheless asserts that this provision misled purchasers into offering lower bids than they otherwise would have made. In light of our reversal and remand for further proceedings in light of the *Shadow Wood* decision, we make no comment on the merits of this argument.

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.[2]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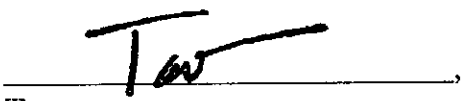
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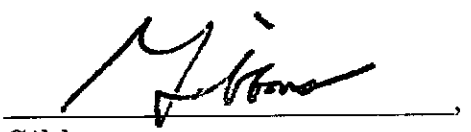
_____, J.
Gibbons

cc: Hon. Nancy L. Allf, District Judge
Thomas J. Tanksley, Settlement Judge
Wright, Finlay & Zak, LLP/Las Vegas
Kim Gilbert Ebron
Legislative Counsel Bureau Legal Division
Eighth District Court Clerk

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[2]HSBC also argues that NRS Chapter 116's statutory scheme is unconstitutional. In light of the supreme court's opinion in *Saticoy Bay*, 133 Nev. ___, 388 P.3d 970, the constitutional challenges to NRS Chapter 116 lack merit. And to the extent that HSBC argues that a grossly unreasonable sale price, in and of itself, can be enough to warrant setting aside a foreclosure sale, we conclude that argument is meritless as supreme court precedent is clear in holding that a low sale price "is not in itself a sufficient ground for setting aside a trustee's sale legally made." *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal quotation marks omitted); *see also Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1111 (citing *Golden* with approval).