

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC., A
NEVADA CORPORATION,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 77088-COA

FILED

APR 13 2020

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

PREMIER ONE HOLDINGS, INC., A
NEVADA CORPORATION,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 77358-COA

ORDER OF AFFIRMANCE

Premier One Holdings, Inc. (Premier), appeals from district court orders granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.¹

¹We deny Nationstar's request for summary disposition or the imposition of sanctions on Premier and its counsel based on counsel's failure to comply with certain provisions of the NRAP. Nonetheless, we caution counsel for Premier that sanctions may be imposed in future matters should counsel fail to comply with the NRAP.

The original owners of the two subject properties failed to make periodic payments to their respective homeowners' associations (HOA). Each HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Prior to the sale of one of the properties, which is located on Harbor Cove Drive (referred to herein as the Harbor Cove Property), the predecessor in interest to respondent Nationstar Mortgage, LLC (Nationstar)—the holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for an amount that Nationstar calculated to be equal to nine months of past due assessments. No similar action was taken with respect to the second property, which is located on Grant Hill Avenue (referred to herein as the Grant Hill Property) and encumbered by a first deed of trust that is likewise held by Nationstar. At the foreclosure sales that followed, Premier purchased both properties.

Premier then filed the underlying action to quiet title to both properties, and Nationstar counterclaimed for the same. Nationstar eventually moved for summary judgment with respect to the Harbor Cove Property, which the district court granted, concluding that the tender extinguished the superpriority portion of the HOA's lien and that the property therefore remained subject to the first deed of trust. Premier appealed that decision in Docket No. 77088. Meanwhile, Nationstar also moved for summary judgment with respect to the Grant Hill Property, which the district court likewise granted, finding that the Federal Home Loan Mortgage Corporation (Freddie Mac) owned the underlying loan such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the

foreclosure sale from extinguishing the first deed of trust. Premier appealed that decision in Docket No. 77358.

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.

Docket No. 77088

In Docket No. 77088, Premier challenges the summary judgment in favor of Nationstar with respect to the Harbor Cove Property, arguing that Nationstar did not present sufficient evidence to establish the superpriority amount of the HOA's lien. We disagree. Nationstar sought to establish the monthly assessment component of the HOA's superpriority lien amount by producing a statement of account for a different property in the HOA from a period following the commencement of the underlying foreclosure proceedings. Although that statement constituted circumstantial evidence of the HOA's monthly assessments for the Harbor Cove Property for the relevant period, it was sufficient to meet Nationstar's burden of production since Premier did not adduce any conflicting evidence. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment). And while Premier further

observes, based on the lack of a statement of account for the Harbor Cove Property, that the HOA's superpriority lien may have included nuisance and abatement charges, that observation amounts to mere speculation and is insufficient to establish a genuine issue of material fact precluding summary judgment. *In re Connell Living Tr.*, 133 Nev. 137, 140, 393 P.3d 1090, 1093 (2017) (noting that speculation is insufficient to defeat summary judgment).

Premier also disputes whether Nationstar adduced sufficient evidence to demonstrate that its predecessor in interest delivered the tender to the HOA's foreclosure agent. But based upon the properly authenticated business records Nationstar produced in support of its motion, there is at least circumstantial evidence in the record—including a printout from the internal filing system of the law firm that represented Nationstar's predecessor in interest during the underlying foreclosure proceeding, as well as copies of the tender letter and check—indicating that the law firm tendered the superpriority amount of the HOA's lien to the HOA's foreclosure agent and that the agent rejected the tender and returned the check. And given that Premier failed to adduce any contrary evidence, *see Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134, the district court properly held that the tender extinguished the superpriority portion of the HOA's lien and that the Harbor Cove Property therefore remained subject to the first deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (holding that, "after a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first

deed of trust on the property”). Accordingly, we affirm the entry of summary judgment in favor of Nationstar in Docket No. 77088.

Docket No. 77358


A review of the record in Docket No. 77358 reveals that no genuine issue of material fact exists and that Nationstar is entitled to judgment with respect to the Grant Hill Property as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Insofar as Premier argues that Freddie Mac was required to be the beneficiary of the deed of trust or to otherwise record its interest in the Grant Hill Property to avail itself of the Federal Foreclosure Bar, we reject Premier’s argument. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019) (holding that a deed of trust need not be assigned to a regulated entity in order for it to own the secured loan—meaning that Nevada’s recording statutes are not implicated—where the deed of trust beneficiary is an agent of the note holder). Moreover, we conclude that the testimony and business records produced by Nationstar were sufficient to prove Freddie Mac’s ownership of the note and its agency relationship with Nationstar in the absence of contrary evidence. *See id.* at 234-36, 445 P.3d at 849-51 (affirming on similar evidence and concluding that neither the loan servicing agreement nor the original promissory note must be produced for the Federal Foreclosure Bar to apply).

Thus, in light of the foregoing, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Nationstar’s deed of trust and that Premier took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat’l Mortg. Ass’n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018) (holding that the Federal

Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent). Accordingly, in Docket No. 77358, we affirm the district court's order granting summary judgment in favor of Nationstar.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

²Given our disposition of this appeal, we need not address the parties' remaining arguments.