

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NONA TOBIN, AS TRUSTEE OF THE
GORDON B. HANSEN TRUST, DATED
8/22/08,
Appellant,
vs.

JOEL A. STOKES AND SANDRA F.
STOKES, AS TRUSTEES OF THE
JIMIACK IRREVOCABLE TRUST;
YUEN K. LEE, AN INDIVIDUAL, D/B/A
MANAGER, F. BONDURANT, LLC;
SUN CITY ANTHEM COMMUNITY
ASSOCIATION, INC.; AND
NATIONSTAR MORTGAGE, LLC,
Respondents.¹

No. 79295-COA

FILED

APR 12 2021

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

ORDER OF AFFIRMANCE

Nona Tobin, as trustee of the Gordon B. Hansen Trust, dated 8/22/08 (the Hansen Trust), appeals from the final judgment in a quiet title, tort, and contract action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

The Hansen Trust owned a property that was the subject of an NRS Chapter 116 foreclosure sale. Following the sale, the underlying litigation ensued between the beneficiary of the deed of trust, respondent Nationstar Mortgage, LLC (Nationstar); the governing homeowners association, respondent Sun City Anthem Community Association, Inc. (Sun City); the successor in interest to the purchaser at the foreclosure sale, respondent Yuen K. Lee, d/b/a F. Bondurant, LLC (Lee); and Lee's

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

successors in interest, respondents Joel A. Stokes and Sandra F. Stokes, as trustees of the Jimijack Irrevocable Trust (the Jimijack Trust). The Hansen Trust then intervened in the underlying proceeding, presenting quiet title, contract, and tort claims, which were based on its allegations that the foreclosure sale was invalid because Sun City miscalculated its lien amount and did not provide sufficient notice of the foreclosure sale.

The majority of the Hansen Trust's claims against Sun City were eventually dismissed pursuant to a stipulation between the parties, and Sun City then moved for summary judgment on the Hansen Trust's only remaining claim against it, which sought to quiet title in the property.² Over the Hansen Trust's opposition, the district court granted Sun City's motion, finding that it complied with the relevant processes and procedures before foreclosing on the Hansen Trust's property. The Hansen Trust then moved for reconsideration, but the district court denied the motion, reasoning that the Hansen Trust failed to present any new evidence that was not previously obtainable in the exercise of due diligence or to otherwise demonstrate that the summary judgment was clearly erroneous. See *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.").

²Insofar as Sun City's motion stood for the proposition that the HOA conducted a valid foreclosure sale on the subpriority portion of its lien, Nationstar joined the motion. But in discussing the motion, we only reference Sun City because the Hansen Trust did not assert any claims against Nationstar during the underlying proceeding, and Nationstar did not present any independent arguments with respect to whether summary judgment was warranted.

The remaining unresolved claims in the underlying proceeding, which were the Hansen Trust's claims against Lee and the Jimijack Trust, eventually proceeded to a bench trial. Following the trial, the district court determined that each of the Hansen Trust's claims against Lee and the Jimijack Trust were based on its challenge to the validity of the foreclosure sale. But the district court further reasoned that it had already rejected the allegations underlying that challenge when it granted Sun City's motion for summary judgment. As a result, the district court concluded that the Hansen Trust's claims against Lee and the Jimijack Trust failed, and the court therefore entered judgment against the Hansen Trust. 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.

On appeal, the Hansen Trust initially challenges the summary judgment against it on its quiet title claim by disputing Sun City's calculation of its delinquency. But insofar as the Hansen Trust focuses on its overall delinquency, which is what Sun City's account statements and foreclosure notices purported to reflect, this assertion is misdirected since a homeowners' association's (HOA) lien does not necessarily include all of a homeowner's delinquent obligations. *See* NRS 116.3116(1) (providing that

an HOA has a lien for, as relevant here, assessments and certain other statutorily authorized “penalties, fees, charges, late charges, fines and interest”).³ Thus, with respect to the Hansen Trust’s delinquent obligations, the question before us is whether the Hansen Trust was continuously in default on obligations that were properly included in Sun City’s lien from the date that the underlying notice of delinquent assessment lien was recorded to the date of the foreclosure sale.

Indeed, if this was not the case, then Sun City could not properly proceed to foreclose. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (holding that a foreclosure sale on a lien is void where that lien has been satisfied prior to the sale “as the lien is no longer in default”); *Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 466-67, 401 P.3d 728, 731-32 (2017) (concluding that NRS 116.3116 does not limit an HOA to one lien enforcement action, but explaining that when an HOA’s lien is rescinded or satisfied, it must restart the foreclosure process to enforce a subsequent lien); *see also SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 746, 334 P.3d 408, 411 (2014) (providing that a notice of delinquent assessment lien initiates NRS Chapter 116 foreclosure proceedings). But even assuming that Sun City misapplied a payment, rejected Nationstar’s attempts to tender, and included erroneous charges in its lien as the Hansen Trust argues, the Hansen Trust has failed to establish the existence of a genuine issue of material fact that precluded summary judgment, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, as the record reflects that the Hansen

³NRS 116.3116 has been amended and renumbered numerous times. For clarity, we cite to the pre-2015 version of the statute, which was the version in effect when the underlying foreclosure sale occurred.

Trust was in default on obligations that were properly included in Sun City's lien—most notably its quarterly assessments—throughout the underlying foreclosure proceedings.

The Hansen Trust next challenges the summary judgment for Sun City by disputing whether Sun City complied with various notice requirements before foreclosing. For example, Sun City asserts that the Hansen Trust failed to comply with NRS 116.31162(4), which currently requires HOAs to provide certain information, such as a proposed repayment plan, before mailing a notice of delinquent assessment lien or taking any other action to collect a past due obligation. But the Nevada Legislature added this requirement to NRS Chapter 116 when it passed Senate Bill 280 in 2013, and the amendment did not become effective until October 1 of that year. *See* 2013 Nev. Stat., ch. 552, § 8, at 3789-90; NRS 218D.330(1) (“Each law . . . passed by the Legislature becomes effective on October 1 following its passage, unless the law . . . specifically prescribes a different effective date.”). And because Sun City mailed its notice of delinquent assessment lien approximately ten months earlier, relief is unwarranted with respect to this issue.

The Hansen Trust also contends that Sun City violated section 7.4 of its covenants, conditions, and restrictions (CC&Rs) insofar as that section requires Sun City to provide various notices and satisfy other procedural requirements before imposing sanctions for violations of its governing documents. But section 8.8 of Sun City's CC&Rs separately addresses the HOA's authority to foreclose, explaining that it automatically has a lien on delinquent assessments under NRS Chapter 116 and that it may enforce such liens in the manner prescribed by that statute. And our

review of the record reflects that Sun City mailed and recorded the required foreclosure notices in the manner prescribed by NRS 116.31162.⁴

Nevertheless, the Hansen Trust contends that Sun City rescinded its notice of sale before proceeding with the foreclosure based on a report that it obtained from the Real Estate Division of the Nevada Department of Business in Industry. But the district court concluded that it could not consider the report in evaluating Sun City's motion for summary judgment because the Hansen Trust failed to submit an authenticated copy with its opposition to the motion. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) (“[I]n order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.”). And because the Hansen Trust does not address the propriety of the district court's decision in this regard on appeal, it waived any challenge to that determination. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Thus, given the foregoing, we conclude that the Hansen Trust failed to demonstrate that a genuine issue of material fact remained with respect to whether Sun City provided sufficient notice before foreclosing. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

⁴To the extent that the Hansen Trust contends that the notices themselves were defective because Sun City miscalculated the lien amounts stated therein, its contention fails for the reason stated above. Moreover, the Hansen Trust's assertion that Sun City's notice of sale was based on a notice of default that was recorded on March 12, 2013, and later rescinded is factually incorrect. Indeed, Sun City's notice of sale expressly references its notice of default that was recorded on April 8, 2013, and nothing in the record indicates that the April 8 notice of default was ever rescinded.

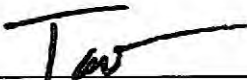
The Hansen Trust's final challenge to the summary judgment against it is that the district court should have set the foreclosure sale aside in equity based on fraud, unfairness, or oppression. *See Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 747-50, 405 P.3d 641, 647-49 (2017) (reaffirming that inadequate price alone is insufficient to set aside a foreclosure sale absent evidence of "fraud, unfairness, or oppression"). But in seeking to establish fraud, unfairness, or oppression, the Hansen Trust generally relies on the arguments that we addressed and rejected above. And regardless, the Hansen Trust does not make any effort to demonstrate that any of the alleged irregularities in the present case affected the foreclosure sale. *See id.* at 749-50, 405 P.3d at 648-49 (explaining that a foreclosure sale cannot be set aside in equity unless it was affected by the alleged fraud, unfairness, or oppression); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). Thus, we conclude that the Hansen Trust failed to demonstrate a genuine issue of material fact with respect to whether the foreclosure sale should have been set aside in equity. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Given the foregoing, the Hansen Trust has not shown that the district court erred by granting summary judgment against it, and we therefore affirm that decision. *See id.* And although the Hansen Trust also challenges the order denying its motion for reconsideration of the summary judgment and the judgment in favor of Lee and the Jimijack Trust, the Hansen Trust does not separately address the district court's bases for making those decisions, but instead, generally relies on the arguments that we addressed and rejected above. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d

at 672 n.3. Thus, because the Hansen Trust has not demonstrated that relief is warranted with respect to either of these decisions, we likewise affirm them.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
Thomson Law PC
Mushkin & Coppedge
Akerman LLP/Las Vegas
Lipson Neilson P.C.
Hong & Hong
Eighth District Court Clerk

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.