

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 8252
SETTLERS INN, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
U.S. BANK, NATIONAL ASSOCIATION,
A NATIONAL BANKING
ASSOCIATION,
Respondent.

No. 81299-COA

FILED

AUG 04 2021

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

ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 8252 Settlers Inn (Saticoy Bay) appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

The original owners of the subject property, Jesus and Gloria Caraveo, failed to make periodic payments to their homeowners' association (HOA). Through its collection agent, Red Rock Financial Services (RRFS), the HOA initiated nonjudicial foreclosure proceedings to collect on the past due assessments and other fees pursuant to NRS Chapter 116. It is undisputed on appeal that the superpriority portion of the HOA's lien consisted of delinquent assessments accrued from August 2009 through April 2010, an amount totaling \$290.00.

After initiating foreclosure, the HOA approved a payment plan for the Caraveos whereby they agreed to pay RRFS \$484.00 per month until their delinquency was paid in full. Jesus made multiple payments to RRFS, which generated a payment allocation report in connection with each payment, the first of which indicated that RRFS applied the initial \$484.00 payment to a block of delinquent assessments that included the entire

superpriority portion of the HOA's lien. Despite the multiple partial payments by Jesus, the Caraveos were ultimately unable to satisfy the full delinquency. RRFS therefore proceeded to foreclose on the property and sell it to Saticoy Bay, which then initiated the underlying action seeking to quiet title against the beneficiary of the first deed of trust on the property, respondent U.S. Bank, National Association.

U.S. Bank ultimately moved for summary judgment, which the district court granted, concluding that Saticoy Bay purchased the property subject to U.S. Bank's deed of trust. Applying the methodology set forth by our supreme court in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 80-81, 459 P.3d 227, 231-32 (2020), for allocating a homeowner's partial payments, the district court reasoned that RRFS—as the HOA's collection agent—specifically applied Jesus's first partial payment in such a way as to satisfy the superpriority portion of the HOA's lien and thereby preserve U.S. Bank's deed of 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 dispute 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 disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Saticoy Bay contends that the district court erred in granting summary judgment on grounds that U.S. Bank supposedly failed to set forth any evidence that the HOA specifically applied any of Jesus's

payments to the superpriority portion of its lien. Specifically, Saticoy Bay argues that the evidence relied upon by U.S. Bank indicates only how RRFS believed the payments would be applied, not how the HOA itself applied the funds once they were disbursed to it by RRFS.

However, as argued by U.S. Bank, it is undisputed that RRFS was acting as the HOA's collection agent at all relevant times, and our supreme court has recognized that an "agent" is generally defined as "[s]omeone who is authorized to act for or in place of another; a representative." *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 67, 412 P.3d 56, 61 (2018) (alteration in original) (quoting *Agent*, *Black's Law Dictionary* (10th ed. 2014)). And the representative for RRFS testified during her deposition that RRFS's role as the HOA's collection agent was to receive payments and ensure that they were properly applied to the debtors' account. *See id.* (recognizing that "an agency relationship [generally] results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired" (alteration and internal quotation marks omitted)).

Saticoy Bay fails to identify any contrary evidence indicating that the HOA did not authorize RRFS to specifically allocate partial payments or that the HOA specifically allocated the funds disbursed to it in a manner inconsistent with RRFS's payment allocation reports; instead, Saticoy Bay merely speculates that the HOA might have allocated the funds differently. *See Wood*, 121 Nev. at 732, 121 P.3d at 1031 (providing that speculation is insufficient to overcome summary judgment); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (explaining the burdens of proof and persuasion that apply when considering a motion for summary judgment). Accordingly, because it is

undisputed that Jesus did not specifically allocate his payments, and because the district court correctly determined that the un rebutted evidence showed that the HOA—though RRFs—allocated the payments to particular assessments encompassing the superpriority portion of its lien, see *Cranesbill*, 136 Nev. at 80, 459 P.3d at 231 (providing that a debtor generally has the right to appropriate a partial payment to particular obligations outstanding, but if the debtor does not do so, “the creditor may determine how to allocate the payment”), Saticoy Bay has failed to demonstrate a genuine dispute of material fact, see *Wood*, 121 Nev. at 729, 121 P.3d at 1029, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Roger P. Croteau & Associates, Ltd.
Aldridge Pite, LLP
Eighth District Court Clerk

¹Insofar 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.