


IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. NOVICK; AND EMILY S.
NOVICK,
Appellants,
vs.
SUMMERLIN NORTH COMMUNITY
ASSOCIATION, A NEVADA NON-
PROFIT COOPERATIVE
CORPORATION; CITIMORTGAGE,
INC., A NEW YORK CORPORATION;
AND CITIBANK, N.A., A NATIONAL
BANKING ASSOCIATION,
Respondents.

No. 84033

FILED

JUN 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court final judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.¹

Appellants Michael and Emily Novick defaulted on their HOA dues, and respondent Summerlin North Community Association held a foreclosure sale wherein respondent Citibank placed the winning bid. In the underlying quiet title action, the Novicks contended that various irregularities in the foreclosure process amounted to “fraud, unfairness, or oppression” that, when combined with the low sales price, warranted setting aside the sale on equitable grounds. *See Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 747-50, 405 P.3d 641, 647-49 (2017) (*Shadow Canyon*) (reaffirming that inadequate price alone is insufficient to set aside a foreclosure sale absent evidence of

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

“fraud, unfairness, or oppression”). The district court granted summary judgment for Citibank and respondent CitiMortgage on the Novicks’ quiet title claim, as well as summary judgment for Summerlin on the Novicks’ NRS 116.4117 claim. The basis for both summary judgments was that there was no fraud, unfairness, or oppression in the foreclosure process that brought about the “low” sales price. Relatedly, the district court found that the property’s fair market value at the time of the sale was roughly \$2.4 million, such that Citibank’s \$1.32 million winning bid was 55 percent of the property’s value.²

We conclude that the district court correctly granted summary judgment for respondents. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court’s decision to grant summary judgment). Although the Novicks identify three irregularities in the foreclosure process, as explained below, we agree with the district court that none of those irregularities amounted to fraud, unfairness, or oppression, that contributed to a decreased sales price. *Cf. Shadow Canyon*, 133 Nev. at 748-49, 405 P.3d at 647-48 (recognizing that 20 percent of fair market value is generally the point at which courts scrutinize the circumstances surrounding a foreclosure sale). In this, we note that it is undisputed that the Novicks were aware that the sale would be taking place and that the only apparent prejudice the Novicks suffered from the identified irregularities is that, in the absence of those irregularities, there may have been a higher winning bid, thereby decreasing the Novicks’ liability to the Citi entities.

²Even accepting the Novicks’ unsupported assertion that the property was worth \$3 million at the time of the foreclosure sale, Citibank’s winning bid would still be 44 percent of the property’s fair market value.

First, the Novicks contend that the Notice of Sale inaccurately stated their unpaid balance as roughly \$19,000 when it was actually much lower. However, we agree with the district court's determination that there was no evidence proffered that the overstated amount impacted bidding at the sale. *See Wood*, 121 Nev. at 732, 121 P.3d at 1031 (recognizing that the party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the operative facts" (internal quotation marks omitted)). Although the Novicks claim in their reply brief that it would be "an impossible test to force the Novicks to somehow prove definitively an alternate reality," we note that the Novicks' reply brief itself identified several ways in which the Novicks believed they could have proved that "alternate reality." Relatedly, although the Novicks suggest that they could have introduced evidence at trial that the irregularities affected the sales price, it was the Novicks' obligation to produce that evidence in opposition to respondents' summary judgment motions. *Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003) ("[S]ummary judgment is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." (internal quotation marks omitted)). Finally, to the extent the Novicks contend that they would have cured the default if the Notice of Sale provided the correct unpaid balance, we conclude that this does not raise a genuine issue of material fact. As the district court found, the Novicks had not made any payments on their unpaid balance for roughly two years preceding the Notice of Sale, despite having entered a \$100-per-month payment plan with Summerlin.

Second, the Novicks contend that Summerlin failed to send the Notice of Sale to nonparty Interface Operations, which held a lien on the

property in addition to those held by the Citi entities. According to the Novicks, this amounted to fraud, unfairness, or oppression because if Interface Operations had known of the sale, it might have bid at the sale and generated a higher winning bid. However, the district court found that Mr. Novick notified Interface Operations of the sale after it took place and within the 60-day redemption period provided by NRS 116.31166(3)-(4) (2015) and that Interface Operations expressed no interest in redeeming the property. It thus stands to reason that if Interface Operations did not want to redeem the property for roughly the winning bid price, it would not have outbid Citibank at the sale if it had been notified of the sale before it took place. Accordingly, we agree with the district court that the Novicks failed to raise a genuine issue of material fact regarding Summerlin's failure to send the Notice of Sale to Interface Operations.³

Finally, the Novicks contend that Summerlin recorded a Release of Super-Priority Lien showing that Citibank had paid the superpriority portion of Summerlin's lien when Citibank did not hold the first priority deed of trust.⁴ According to the Novicks, this led prospective bidders to believe that they would be purchasing the property subject to Citibank's \$1.8 million mortgage, as opposed to CitiMortgage's \$125,000 mortgage. However, the district court found that any prospective bidder who had notice of the Release also had notice of the two recorded deeds of


³Nor are we persuaded that Summerlin's failure to record the statutorily required affidavit amounts to fraud, unfairness, or oppression.

⁴It is undisputed that one of the Citi entities paid Summerlin the superpriority portion of its lien. To the extent that the Novicks argue this payment was ineffective to cure the superpriority default, we are not persuaded. See *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 79, 459 P.3d 227, 230 (2020) (observing that a party other than a first deed of trust beneficiary can cure a superpriority default).


trust and the recorded subordination agreement, such that a prospective bidder would be aware that they would be taking title subject to CitiMortgage's deed of trust. The Novicks do not meaningfully address that finding, which we otherwise find persuasive. Moreover, the record indicates that the opening bid was for \$21,000 and that there were 189 bids between two bidders before Citibank ultimately placed the \$1.32 million winning bid. In light of this evidence, we conclude that the inaccurate Release does not create a genuine issue of material fact as to whether the sale was affected by fraud, unfairness, or oppression.

In sum, the district court correctly determined that the Novicks produced no evidence of fraud, unfairness, or oppression sufficient to set aside the sale on equitable grounds. We therefore affirm the district court's summary judgment in favor of the Citi entities. And because the Novicks' arguments regarding their NRS 116.4117 claim are identical to those addressed above, we necessarily affirm the district court's summary judgment in favor of Summerlin.

It is so ORDERED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Hon. Mark R. Denton, District Judge
Kristine M. Kuzemka, Settlement Judge
Heaton Fontano, Ltd.
Lipson Neilson P.C.
Akerman LLP/Las Vegas
Eighth District Court Clerk