IN THE SUPREME COURT OF THE STATE OF NEVADA

RESOURCES GROUP, LLC,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION, ND,
Respondent.

No. 84992

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm.[1]

Appellant Resources Group, LLC's predecessor purchased the subject property at an HOA foreclosure sale. Thereafter, respondent U.S. Bank filed the underlying action to judicially foreclose on its deed of trust. When U.S. Bank learned of the HOA's foreclosure sale, it added Resources Group as a defendant, and both parties sought an adjudication of whether the HOA's sale extinguished U.S. Bank's deed of trust. The district court held a bench trial, at which evidence was introduced showing that the HOA's agent did not mail the notice of default to U.S. Bank and instead

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

mailed it to an entity called US Recordings. U.S. Bank's representative, Bryan Heifner, also testified that if U.S. Bank had received the notice of default, U.S. Bank would have paid off the HOA's lien to prevent the HOA from foreclosing.

Following trial, the district court ruled in favor of Resources Group. It found that even though U.S. Bank was not mailed the notice of default, Resources Group and its agent were not statutorily required to mail that notice to U.S. Bank. On appeal, however, we vacated the district court's order. *See U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev. 199, 444 P.3d 442 (2019) (*Resources Group*). In doing so, we observed that the district court erred in concluding that U.S. Bank was not statutorily entitled to be mailed the notice of default.[2] *Id.* at 203, 444 P.3d at 447. We further observed that, under this court's case law, if U.S. Bank (1) did not receive timely actual notice of the HOA's foreclosure sale by some other source and (2) U.S. Bank was prejudiced by not being mailed the notice of default, the HOA's foreclosure sale would be void. *Id.* at 204, 444 P.3d at 447. In doing so, we noted the significance of the testimony from Mr. Heifner wherein he stated that U.S. Bank would have paid off the lien if it had received the notice of default and that U.S. Bank did not otherwise receive timely actual notice of the HOA's foreclosure sale. *Id.* Namely, we observed that "[t]his testimony, if credited, establishes the lack of notice and prejudice needed to void the sale." *Id.* Nonetheless, we remanded the

[2]At the time the district court entered its order following the bench trial, it did not have the benefit of this court's decision in *SFR Investments Pool 1, LLC v. Bank of New York Mellon*, 134 Nev. 483, 488-89, 422 P.3d 1248, 1252-53 (2018), which held that an HOA's foreclosure notices must be mailed to a deed of trust beneficiary.

matter for further proceedings because the district court had not made factual findings regarding actual notice or prejudice.

On remand, the parties engaged in limited additional discovery. U.S. Bank moved for summary judgment, relying largely on *Resources Group*'s observations regarding the state of the evidence. Over Resources Group's objection that issues of material fact remained, the district court granted U.S. Bank's motion, finding that the notice of default was not mailed to U.S. Bank, that U.S. Bank did not receive timely alternative notice of the HOA's foreclosure sale, and that U.S. Bank was prejudiced because Mr. Heifner testified that U.S. Bank would have paid off the HOA's lien if it had received timely actual notice of the HOA's foreclosure sale. Consequently, the district court found that the HOA's sale was void and that Resources Group's putative status as a bona fide purchaser was irrelevant.

On appeal, Resources Group primarily argues that the record demonstrates that U.S. Bank was mailed the notice of sale. But *Resources Group* made clear that U.S. Bank needed to receive *timely* notice of the foreclosure sale, and even if U.S. Bank had received the notice of sale, U.S. Bank would have been deprived of the full statutory grace period for curing the default by virtue of not having been mailed the notice of default. 135 Nev. at 204 & n.3, 444 P.3d at 447 & n.3. As a fallback argument, Resources Group argues that because evidence shows the notice of sale was mailed to U.S. Bank but U.S. Bank's records do not show evidence of it being received, U.S. Bank's records are unreliable to the point that it may have somehow received the notice of default, thereby creating a question of material fact. We are not persuaded that this absence of evidence creates a genuine issue of material fact to preclude summary judgment. *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)). As an additional fallback argument, Resources Group argues that U.S. Bank failed to introduce evidence that, during the period surrounding the HOA's 2012 foreclosure sale in this case, it had tendered any amounts to satisfy an HOA's lien in other cases. But as with its previous argument, we are not persuaded that such evidence was necessary in light of Mr. Heifner's testimony.

Resources Group next takes issue with Mr. Heifner's testimony. Because Mr. Heifner testified that US Recordings would have mailed the deed of trust to U.S. Bank after it was recorded, Resources Group contends that this creates a genuine issue of material fact as to whether US Recordings may have also forwarded the notice of default to U.S. Bank. Again, we are not persuaded that this absence of evidence creates a genuine issue of material fact. *Id.* Relatedly, Resources Group argues that because Mr. Heifner had no personal knowledge of US Recordings, he was not qualified under NRS 50.025(1)(a) to testify that US Recordings had no affiliation with U.S. Bank. But if Resources Group truly found this testimony objectionable, it was incumbent on Resources Group to raise a timely objection, which it did not. *Cf. Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004) (observing that the purpose of a timely objection is to allow the trial court to contemporaneously correct any prejudice or error).

To the extent that our disposition has not expressly addressed Resources Group's other arguments, we conclude that they are precluded by our previous *Resources Group* decision or that they otherwise do not

warrant reversal. *See, e.g.*, 135 Nev. at 205 & n.4, 444 P.3d at 448 & n.4. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Hon. Timothy C. Williams, District Judge
Eleissa C. Lavelle, Settlement Judge
Law Offices of Michael F. Bohn, Ltd.
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk