

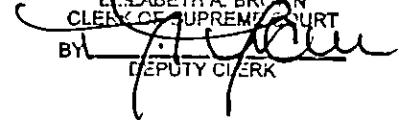
IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY; AND WILMINGTON
TRUST, N.A., AS SUCCESSOR
TRUSTEE TO CITIBANK, N.A., AS
TRUSTEE TO STRUCTURED ASSET
MORTGAGE INVESTMENT II, INC.,
BEAR STEARNS ALT-A TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-4,
Appellants,
vs.
FORT APACHE HOMES, INC., A
NEVADA CORPORATION; VIA
VALENCIA/VIA VENTURA
HOMEOWNERS ASSOCIATION; AND
ABSOLUTE COLLECTION SERVICES,
Respondents.

No. 89009

FILED

JAN 15 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court final judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

The district court granted summary judgment for respondent Fort Apache Homes and against appellant Wilmington Trust. It concluded that Wilmington's predecessor did not make a superpriority tender to respondent Via Valencia Homeowners Association's agent, respondent Absolute Collection Services (ACS). Accordingly, the district court concluded that the HOA's foreclosure sale extinguished Wilmington's deed of trust. *Cf. SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014) (holding that an HOA's proper foreclosure of its

superpriority lien extinguishes a deed of trust); *Bank of Am., N.A., v. SFR Invs. Pool, LLC*, 134 Nev. 604, 611, 427 P.3d 113, 120-21 (2018) (holding that a first deed of trust beneficiary can prevent its deed of trust from being extinguished by an HOA foreclosure by tendering the superpriority amount).

On appeal, Wilmington contends that this case is factually analogous to *7510 Perla Del Mar Avenue Trust v. Bank of America, N.A.*, 136 Nev. 62, 458 P.3d 348 (2020) (*Perla*). There, we held that a superpriority tender is excused for futility if the entity entitled to the tender has a “known policy of rejecting such payments.” *Id.* at 63, 458 P.3d at 349. We agree with Wilmington and therefore conclude the district court erred in granting summary judgment vis-à-vis Wilmington and Fort Apache. *Cf. 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).

In *Perla*, the evidence adduced at trial showed that an attorney working on the deed of trust beneficiary’s behalf (Rock Jung) sent a letter to the HOA’s foreclosure agent (NAS) offering to satisfy the superpriority portion of the HOA’s lien. 136 Nev. at 64, 458 P.3d at 349-50. The evidence also showed that NAS would reject a payment for anything less than the entire amount of the HOA’s lien. *Id.* at 64-65, 458 P.3d at 349-50. On appeal, we affirmed the district court’s judgment that the deed of trust beneficiary was excused from making an actual superpriority tender because doing so would have been futile. *Id.* at 67, 458 P.3d at 351. In particular, we pointed to NAS’s policy of rejecting tenders for anything less than the full lien amount, combined with Mr. Jung’s testimony that he was aware of this policy. *Id.*

In the wake of *Perla*, we considered a fact pattern similar to that in *Perla* but involving a different HOA foreclosure agent, ACS. See *Bank of Am., N.A. v. Trashed Home Corp.* No. 83655, 2023 WL 3055194 (Nev. Apr. 21, 2023) (Order of Reversal) (*Trashed Home*). In *Trashed Home*, the record indicated that Rock Jung made the same inquiry to ACS as he did to NAS in *Perla*. *Id.* at *1. In response, ACS’s representative, Kelly Mitchell, explained that ACS would reject a superpriority tender if such tender was accompanied by a “paid in full” condition. *Id.* at *2. Based on Ms. Mitchell’s response and Mr. Jung’s awareness that this response was inevitable, we concluded that *Perla*’s known-policy-of-rejection excuse applied. *Id.* at *2.

In this case, Wilmington’s proffered evidence is substantively identical to that in *Trashed Home*—namely, Ms. Mitchell’s deposition testimony that ACS had a policy of rejecting any superpriority tender from Mr. Jung accompanied by a “paid in full” condition. *Id.*; cf. *Perla*, 136 Nev. at 67 n.4, 458 P.3d at 351 n.4 (citing *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 607, 427 P.3d 113, 118 (2018), for the proposition that an entity trying to make a superpriority tender has a right to insist on a “paid in full” condition). Wilmington and Fort Apache dispute whether Mr. Jung put a “paid in full” condition on his checks during the time frame at issue here. But given that this case was resolved at the summary judgment phase, we conclude that Wilmington put forth sufficient evidence to create a genuine issue of material fact in that respect—i.e., to the extent that the “paid in full” issue is material, Wilmington put forth sufficient evidence to support its position. *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (“[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most

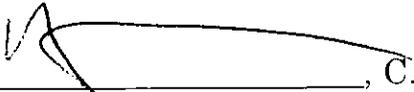
favorable to the nonmoving party.”); *Id.* at 731, 121 P.3d at 1031 (“The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”). Although the district court looked to *Bank of America, N.A., v. Thomas Jessup, LLC Series VII*, No. 73785, 2020 WL 2306320 (Nev. May 2020) (Order Affirming in Part, Reversing in Part, and Remanding) (*Thomas Jessup*), where tender was not excused, that case presented unique facts and was unpublished. *Perla* is the controlling law. Given the evidence presented here, we conclude the district court erred in granting summary judgment in favor of Fort Apache vis-à-vis Wilmington. *Cf. Wood*, 121 Nev. at 729, 731, 121 P.3d at 1029, 1031 (explaining that summary judgment review requires viewing the evidence and reasonable inferences in the non-movant’s favor, and that only factual disputes made material by the substantive law matter).

The district court also ruled against Wilmington on its claims against Via Valencia and ACS. In doing so, the district court primarily found that those claims were time-barred. From our review of the record and the parties’ briefs, it appears that the timeliness of those claims—along with their merits—hinges on how the district court chooses to proceed on Wilmington’s quiet title claim against Fort Apache. Accordingly, we decline to address whether Wilmington’s claims against Via Valencia and ACS are time-barred. *Cf. Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (“This court’s duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.”).

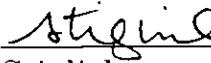
Consistent with the foregoing, we

ORDER the judgment of the district court REVERSED AND

REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Anna C. Albertson, Judge
Cox & Wilson
Hanks Law Group
Surur Law Group
Troutman Pepper Hamilton Sanders LLP/Las Vegas
Eighth District Court Clerk