IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-OA10 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OA10,
Appellant,
vs.
CAPE JASMINE COURT TRUST,
Respondent.

No. 69897

FILED

MAY 15 2017

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

*ORDER OF REVERSAL AND REMAND*

Appellant the Bank of New York Mellon F/K/A the Bank of New York (BONY) appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

BONY held a first deed of trust on the subject property, which was deeded to respondent Cape Jasmine Court Trust by an entity[1] that purchased the property at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116 after the homeowner failed to pay HOA assessments. *See* NRS 116.3116-.31168; *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. ___, ___, 388 P.3d 970, 971 (2017) (recognizing that the statutory scheme grants HOAs superpriority liens for unpaid assessments and allows HOAs to nonjudicially foreclosure on those liens). After receiving title to the

[1]The entity that originally purchased the property at the HOA foreclosure sale is not a party to this appeal.

property, Cape Jasmine filed a complaint, as is pertinent here, to quiet title to the property, which BONY opposed. The district court ultimately granted summary judgment in Cape Jasmine's favor, finding that the sale was conducted properly and that the HOA's foreclosure on its superpriority lien extinguished BONY's deed of trust on the property. This appeal followed.

In *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, ___, 366 P.3d 1105, 1114 (2016), the Nevada Supreme Court recognized that a quiet title action is equitable in nature and, as such, a court must consider the "entirety of the circumstances that bear upon the equities." In particular, the supreme court recognized that the parties must develop a record regarding, amongst other things, the impact of any applicable covenants, conditions, and restrictions (CC&Rs) on the foreclosure sale process.[2] *See id.* at ___, 366 P.3d at 1113. In addition, the supreme court recognized that whether the sale was commercially reasonable and whether a bona fide purchaser

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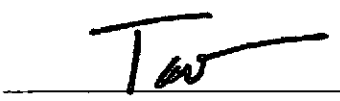
[2]In that vein, BONY asserts that the CC&Rs included a mortgage savings clause specifically stating that the foreclosure of the HOA lien would not affect the first deed of trust. While BONY appears to recognize that the Nevada Supreme Court has concluded that such CC&R provisions are superseded by NRS Chapter 116, such that a first deed of trust is still extinguished by a proper HOA foreclosure sale, *see SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, ___, 334 P.3d 408, 419 (2014) (concluding that a similar mortgage savings clause was not effective because NRS 116.1104 provides that, unless expressly stated, its provisions may not be varied by agreement or waived), it nonetheless asserts that this provision misled purchasers into offering lower bids than they otherwise would have made. Because we reverse and remand this matter for further proceedings in light of the *Shadow Wood* decision, we make no comment on the merits of this argument.

will be harmed by setting the sale aside are also issues that must be taken into account. *See id.* at ___, 366 P.3d at 1114, 1116.

Because the parties failed to develop an adequate record below, and because the district court granted summary judgment in favor of Cape Jasmine without addressing how these issues bore upon the equities, we conclude that summary judgment in Cape Jasmine's favor may not have been proper, and we therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[3]

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

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[3]BONY also argues that the sale should be set aside because NRS Chapter 116's statutory scheme is unconstitutional. In light of the supreme court's opinion in *Saticoy Bay*, 133 Nev. ___, 388 P.3d 970, BONY's constitutional challenges to NRS Chapter 116 lack merit. And to the extent BONY asks this court to adopt a rule that a grossly unreasonable sale price, in and of itself, can be enough to warrant setting aside a foreclosure sale, we decline to do so as supreme court precedent is clear in holding that a low sale price "is not in itself a sufficient ground for setting aside a trustee's sale legally made." *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal quotation marks omitted); *see also Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1111 (citing *Golden* with approval).

cc: Hon. Linda Marie Bell, District Judge
Akerman LLP/Las Vegas
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk