

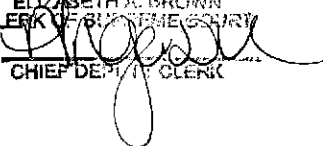
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR GSR
MORTGAGE LOAN TRUST 2007-OA1,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-OA1;
AND WESTERN PROGRESSIVE-
NEVADA, INC.,
Appellants,
vs.
VIA SARAFINA DRIVE TRUST,
Respondent.

No. 72451

FILED

JUN 18 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Deutsche Bank National Trust Company appeals from a district court's summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Deutsche Bank was assigned an interest as the beneficiary of a deed of trust on a property which respondent Via Sarafina Drive Trust acquired at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. Via Sarafina filed suit against Deutsche Bank and others to establish that Via Sarafina now held the property free and clear of any encumbrances such as Deutsche Bank's deed of trust. Both Deutsche Bank and Via Sarafina filed motions for summary judgment. The district court denied Deutsche Bank's motion and granted summary judgment in favor of Via Sarafina. 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 issue 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 issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

We first address Deutsche Bank's arguments that the foreclosure sale was improper because notice of the postponed sale was not sent to it. Deutsche Bank's arguments are not supported by the statutes which they rely upon in making this argument. Our review of the record shows that the foreclosure sale was properly noticed to Deutsche Bank's predecessor-in-interest, pursuant to NRS 107.090. But neither that statute nor NRS 116.31164 requires that the association or any other person conducting the sale provide subsequent notice to an interest holder that acquired its interest after the notice of foreclosure sale is recorded and sent to all persons with an interest in the property at the time of recording. Similarly, Deutsche Bank's arguments that the notice of sale was not available on the county recorder's website, thereby negating the notice sent to Deutsche Bank's predecessor-in-interest, have no basis in the applicable statutes or caselaw governing notices of foreclosure sales. As such, we determine that there are no genuine issues of material fact regarding whether the foreclosure sale was properly noticed. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 746, 334 P.3d 408, 411 (2014) (discussing the notice requirements for a superpriority lien).

Deutsche Bank also argues that the HOA foreclosure was commercially unreasonable, and therefore void. *See generally Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. ___, 366

P.3d 1105 (2016); *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. ___, 405 P.3d 641 (2017). Specifically, Deutsche Bank asserts that the sale price was so low and that the above-mentioned issues with notice of the foreclosure sale were so unfair that reversal of the district court decision is justified based upon the equities. *See Shadow Wood*, 132 Nev. at ___, 366 P.3d at 1114-15 (requiring the court to consider the entirety of the circumstances that bear upon the equities). However, the circumstances as represented in the record do not make a showing of fraud, unfairness, or oppression. *See id.* at ___, 366 P.3d at 1112; *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31 (noting general allegations and conclusory statements do not create genuine issues of fact). Indeed, it cannot be said that a foreclosure sale conducted in accordance with all relevant laws is unfair.¹ As such, Deutsche Bank's commercial reasonableness argument is not grounds to reverse summary judgment.


The remainder of Deutsche Bank's arguments are unpersuasive attempts to question the constitutionality of the HOA foreclosure statutes pursuant to *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F3d 1154 (9th Cir. 2016). These arguments are unconvincing, and we cannot reevaluate *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev. ___, 388 P.3d 970 (2017). *See Hubbard v. U.S.*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting stare decisis "applies a

¹Deutsche Bank also argues that it was unfair of the district court to grant summary judgment where it did not follow a discovery commissioner's report and recommendation to compel certain discovery Deutsche Bank sought about the ownership and management of Via Sarafina post-foreclosure. We do not agree, as there was no abuse of discretion by the district court in its order on this discovery issue. *See Johnson v. Wells Fargo Bank Nat'l Ass'n*, 132 Nev. ___, ___, 382 P.3d 914, 916 (2016) (noting that discovery orders are reviewed for an abuse of discretion).

fortiori to enjoin lower courts to follow the decision of a higher court").
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Janet Trost, Settlement Judge
Emilie K. Edling
Houser & Allison, APC
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk