

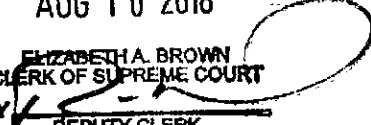
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHH MORTGAGE CORPORATION AS
SERVICER FOR STRUCTURED ASSET
MORTGAGE INVESTMENT 11 TRUST
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-AR5, A
NEW JERSEY CORPORATION,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND SEVEN HILLS
MASTER COMMUNITY ASSOCIATION,
Respondents.

No. 72878

FILED

AUG 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

PHH Mortgage Corporation appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

PHH held a first deed of trust on a property which respondent SFR Investments Pool 1, LLC, purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. SFR filed suit against PHH to establish that SFR now held the property free and clear of any encumbrances such as PHH's deed of trust. Prior to any discovery activities, SFR filed a motion for summary judgment which PHH opposed. The district court granted summary judgment in favor of SFR. Following a decision from the Nevada supreme court in this area, PHH filed a motion for reconsideration of SFR's motion for summary judgment. The district court denied the motion for reconsideration. 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,

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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.

To the extent that PHH argues against NRS Chapter 116's constitutionality, 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) (holding that NRS Chapter 116 does not violate the takings clause, does not implicate due process concerns, and is constitutional on its face). *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting stare decisis "applies a fortiori to enjoin lower courts to follow the decision of a higher court").

As for PHH's arguments that summary judgment was improper as the foreclosure sale was commercially unreasonable, we are not persuaded by the suggested interpretation of *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016). The recitals in a deed made pursuant to NRS Chapter 116 are conclusive absent a showing of fraud, unfairness, or oppression in addition to a purported inadequate price at foreclosure. *See* 132 Nev. at 56, 366 P.3d at 1110.

Alternatively, PHH asserts that it can establish a genuine issue of material fact of equitable effect consistent with *Shadow Wood* because the original foreclosure sale was orally postponed, the CC&Rs had a mortgage savings clause, and the trustee's deed following the sale only

purported to convey the trustee's interest, not the homeowners' interest. None of these assertions indicate fraud, unfairness, or oppression. NRS 107.082(2) specifically permits postponement of a trustee's sale by oral proclamation up to three times without new written notice, and compliance with this statute does not provide grounds to invalidate a foreclosure. *Cf. JED Prop. v. Coastline RE Holdings NV Corp.*, 131 Nev. 91, 95-96, 343 P.3d 1239, 1241-42 (2015) (determining that compliance with NRS 107.080 was not grounds for wrongful foreclosure claim). Similarly, Nevada case law had already determined that CC&R clauses do not alter the applicability of NRS Chapter 116 to eliminate a first deed of trust. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-58, 334 P.3d 408, 419 (2014) (recognizing that NRS 116.1104 overrules mortgage protection clauses contained in CC&Rs); NRS 116.1104 (stating that NRS Chapter 116 provisions cannot be varied by agreement and rights cannot be waived except as provided by the statute).

And although the deed language is not a model of clarity, it does not support a conclusion that the foreclosure was commercially unreasonable where the evidence in the record demonstrates that the foreclosure sale was conducted pursuant to NRS Chapter 116. *See* NRS 116.31166(1) ("Every sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, vests in the purchaser the title of the unit's owner"); *see also City Motel, Inc. v. State ex rel. State Dep't of Highways*, 75 Nev. 137, 141, 336 P.2d 375, 377 (1959) (noting that "[i]t is the intent of the parties to the deeds which . . . must determine the nature and extent of the estate conveyed," not just the language of the deed). Because a low price is insufficient alone, and PHH's arguments do not show any other indication of fraud, unfairness, or oppression, we determine that no genuine issue of

material fact exists as to the commercial reasonableness of this foreclosure. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. ___, ___, 405 P.3d 641, 645 (2017) (determining that the commercial reasonableness standard applicable under the Uniform Commercial Code does not apply to HOA foreclosure sales of real property).

Finally, PHH asserts that the district court erred by not allowing it discovery. We review a request pursuant to NRCP 56(f) for a continuance for additional discovery before summary judgment for an abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). Here, we see no abuse of discretion in the district court denying discovery in light of PHH's failure to provide an affidavit pursuant to NRCP 56(f). *See Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011) (noting a party is required to "provide an affidavit giving the reasons why the party cannot present facts essential to justify the party's opposition" (internal quotations omitted)).

Therefore, our review of the record and all other arguments shows no genuine issue of material fact exists and summary judgment was proper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



C.J.

Silver



J.

Tao



J.

Gibbons

cc: Hon. James Crockett, District Judge
John Walter Boyer, Settlement Judge
Ballard Spahr LLP/Las Vegas
Ballard Spahr LLP/Washington DC
Kim Gilbert Ebron
Boyack Orme & Anthony
Eighth District Court Clerk