IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 10289 RAINY BREEZE,
Appellant,
vs.
U.S. BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF BANC OF AMERICA FUNDING CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-1,
Respondent.

No. 75980-COA

ORDER OF REVERSAL AND REMAND

Saticoy Bay LLC Series 10289 Rainy Breeze appeals from a district court order granting summary judgment in a quiet title and declaratory relief action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

The original owners of the subject property failed to pay periodic assessments to Mirasol Homeowners Association (Mirasol). Through its agent, Red Rock Financial Services (Red Rock), Mirasol mailed and recorded a notice of lien for, among other things, unpaid assessments and later recorded a notice of default and election to sell to collect on the past-due assessments and other fees pursuant to NRS Chapter 116. Appellant Saticoy Bay LLC Series 10289 Rainy Breeze (Saticoy Bay) purchased the property at the homeowners' association (HOA) foreclosure sale, and respondent U.S. Bank—the current beneficiary under the first deed of trust recorded against the property—filed suit against Saticoy Bay

seeking to establish that its interest survived the sale. Saticoy Bay counterclaimed, seeking to quiet title to the property in itself.

The parties filed competing motions for summary judgment, and the district court ruled in favor of U.S. Bank, finding that its predecessor-in-interest had tendered a check to Silver State Trustee Services (Silver State) prior to the foreclosure sale that satisfied the superpriority portion of Mirasol's lien. The district court further concluded that Mirasol's foreclosure notices were void because they improperly included collection fees and costs as part of the amount owed. It also concluded that Saticoy Bay was not a bona fide purchaser. On all of these grounds, the district court concluded that Saticoy Bay acquired the property subject to U.S. Bank's deed of trust. Saticoy Bay then moved to alter or amend the judgment on grounds that Silver State was not Mirasol's agent and was instead the agent for a different HOA with a different lien, and that the tender therefore did not affect Mirasol's lien. The district court denied the motion, concluding that the evidence and arguments relied upon were available to Saticoy Bay at the time of briefing and the hearing on the motions for summary judgment. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *See 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 Saticoy Bay's argument that the tender to Silver State could not have extinguished Mirasol's superpriority lien. U.S. Bank's only argument on this issue is that Saticoy Bay failed to raise it below and has therefore waived it. However, Saticoy Bay did briefly argue in its motion for summary judgment that Silver State was the foreclosure agent for Mountain's Edge Master Association (Mountain's Edge), not Mirasol, and that the tender therefore could not have impacted the interest Saticoy Bay acquired at the foreclosure sale stemming from Mirasol's lien. Although Saticoy Bay raised the issue, U.S. Bank did not address it in its opposition below, nor did the district court in its order granting summary judgment. Thus, Saticoy Bay did not waive the issue.

Turning to the merits of Saticoy Bay's argument, there is undisputed evidence in the record showing that Silver State was an agent for Mountain's Edge, to which the original owners of the property also owed past-due assessments. However, there is no evidence in the record demonstrating—and U.S. Bank has never alleged—that Silver State was in any way authorized to accept a tender on behalf of Mirasol in satisfaction of its lien; indeed, our de novo review of the record reveals that U.S. Bank's predecessor-in-interest made the tender at issue over one year before Red Rock mailed the notice of lien for delinquent assessments on behalf of Mirasol that ultimately led to the foreclosure sale at which Saticoy Bay acquired the property. Accordingly, the tender could not have possibly extinguished the superpriority portion of Mirasol's lien, which did not even

exist until Red Rock mailed the notice of lien. *See* NRS 116.3116(2) (2013) (stating that an HOA lien is prior to a first security interest "to the extent of the assessments . . . which would have become due in the absence of acceleration during the 9 months immediately preceding *institution of an action to enforce the lien*" (emphasis added)); *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 754, 334 P.3d 408, 417 (2014) (citing with approval the Nevada Real Estate Division's advisory opinion that a notice of lien initiates an action for purposes of NRS 116.3116(2)).[1] Thus, the district court erred in concluding that the tender extinguished the superpriority portion of Mirasol's lien.

We next consider Saticoy Bay's argument that the district court erred in concluding that the foreclosure notices were void because they included collection fees and costs in the amount owed. The district court's ruling on this issue relied on the Nevada Supreme Court's decision in *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, which held that "the superpriority lien granted by [the version of] NRS 116.3116(2) [applicable to this case] does not include an amount for collection fees and foreclosure costs incurred." 132 Nev. 362, 371, 373 P.3d 66, 72 (2016). Nothing in that decision supports the notion that notices given pursuant to NRS Chapter 116 are void if the total amount of the lien stated therein

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[1]NRS 116.3116 was amended in 2015 such that it now states that the recording of the notice of default and election to sell—not the mailing of the notice of lien—is the date from which the amount of the superpriority lien is calculated. *See* 2015 Nev. Stat., ch. 266, § 1, at 1334-36. As these proceedings occurred prior to 2015, we consider the mailing of the notice of lien as the appropriate date in accordance with *SFR Investments Pool 1*.

includes amounts that are not included in the superpriority portion. To the contrary, Nevada law is clear that such amounts may be collected and included in the total amount of the lien. *See* NRS 116.31162(1)(c) (2013) (stating that the total amount of the HOA lien "includ[es] costs, fees and expenses incident to its enforcement"); *SFR Invs. Pool 1*, 130 Nev. at 757, 334 P.3d at 418 ("[I]t [i]s appropriate to state the total amount of the lien [in the requisite notices]."). Accordingly, the district court erred in granting summary judgment in favor of U.S. Bank on this ground.

Finally, we consider Saticoy Bay's argument that the district court erred in concluding that it was not a bona fide purchaser. U.S. Bank's only argument on this point is that the bona-fide-purchaser doctrine does not apply where a previous tender extinguished the superpriority portion of the foreclosed lien. However, as noted above, the tender in this case did not satisfy any portion of Mirasol's lien, so U.S. Bank's argument is without merit. Given that U.S. Bank has failed—below and on appeal—to identify any other equity or basis for Saticoy Bay to have notice of such an equity under the circumstances of this case, we conclude the district court erred in granting summary judgment on this issue and determining that Saticoy Bay was not a bona fide purchaser. *See Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 64, 366 P.3d 1105, 1115 (2016) ("A subsequent purchaser is bona fide under common-law principles if it takes the property for a valuable consideration and without notice of [a] prior equity . . . ." (internal quotation marks omitted)).

In light of the foregoing, we reverse the district court's order granting summary judgment in favor of U.S. Bank and remand this matter

to the district court for further proceedings consistent with this order, including to determine, in the first instance, whether summary judgment should be granted in favor of Saticoy Bay.[2]

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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

[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.