

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CITIMORTGAGE, INC., A NATIONAL
ASSOCIATION,
Appellant,
vs.
KENNETH BERBERICH, AN
INDIVIDUAL,
Respondent.

No. 70001

FILED

JUN 13 2017

ELIZABETH A. KOWIN
CLERK OF SUPREME COURT
BY: *AWolcott*
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Citimortgage, Inc. appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Citimortgage, Inc. held a first deed of trust on the subject property, which respondent Kenneth Berberich purchased 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 purchasing the property, Berberich filed a complaint, as is pertinent here, to quiet title to the property, which Citimortgage opposed. The district court ultimately granted summary judgment in Berberich's favor, finding that the sale was conducted properly and that the HOA's foreclosure on its superpriority lien extinguished Citimortgage's deed of trust on the property. Additionally, the district

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court denied Citimortgage's NRCP 56(f) motion which sought additional time for discovery in order to procure evidence demonstrating, amongst other things, how the foreclosure sale was conducted and whether it was done in a manner that artificially lowered the sale price of 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 discussed the following factors as potentially bearing on the equities of an HOA's foreclosure sale: (1) a grossly inadequate foreclosure sale price; (2) a showing of fraud, unfairness, or oppression leading to the foreclosure sale; (3) the extent to which a complaining party's inaction led to the HOA's foreclosure sale; and (4) the presence of a bona fide purchaser. *Id.* at ___, 366 P.3d at 1112-16.

Here, the district court granted summary judgment in favor of Berberich without consideration of the *Shadow Wood* opinion, and thus, the district court did not properly consider the disputed factual questions material to the competing equities in this case. Therefore, we conclude that summary judgment in Berberich's favor was not proper. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law). On remand, the district court should reconsider Citimortgage's request for an NRCP 56(f) continuance in light of *Shadow Wood*. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹Citimortgage also argues that (1) NRS Chapter 116's statutory scheme is unconstitutional and (2) the HOA's governing Covenants, Conditions, and Restrictions led to property selling for a grossly inadequate price. In light of the supreme court's opinion in *Saticoy Bay*, Citimortgage's constitutional challenges to NRS Chapter 116 lack merit. We decline to address the second argument, however, because Citimortgage is entitled to the appellate relief it seeks on other grounds. See *First Nat'l Bank of Nev. v. Ron Rudin Realty Co.*, 97 Nev. 20, 24, 623 P.2d 558, 560 (1981) ("In that our determination of the first issue is dispositive of this case, we do not reach the second issue . . .").

And, to the extent Citimortgage asks this court to adopt a rule that a grossly inadequate 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. James Crockett, District Judge
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