

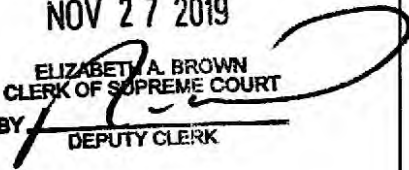
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON,  
F/K/A AS THE BANK OF NEW YORK,  
AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE  
CWABS INC., ASSET-BACKED  
CERTIFICATES SERIES 2006-2, A  
FOREIGN CORPORATION,  
Appellant,  
vs.  
HOLM INTERNATIONAL  
PROPERTIES, LLC, A UTAH LIMITED  
LIABILITY COMPANY REGISTERED  
AS A FOREIGN LIMITED LIABILITY  
IN NEVADA,  
Respondent.

No. 76120-COA

**FILED**

NOV 27 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

The Bank of New York Mellon (BNYM) appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

The underlying case arose from a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. Considering the parties' competing motions for summary judgment, the district court ruled in favor of the purchaser at the sale—respondent Holm International Properties, LLC (Holm)—on grounds that the HOA foreclosed on its superpriority lien and thereby extinguished appellant BNYM's first deed of trust. This appeal followed.

As a preliminary matter, we note that Holm's counsel withdrew during the pendency of this appeal, and after the supreme court ordered Holm to retain new counsel, it failed to do so. Accordingly, the supreme

court prohibited Holm from further participating in this appeal. *The Bank of New York Mellon v. Holm Int'l Props., LLC*, Docket No. 76120 (Order, May 24, 2019); *see also Salman v. Newell*, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994) (observing that no statute or court rule permits a nonlawyer to represent an entity and concluding that an entity cannot proceed in pro se). Because Holm has therefore failed to file an answering brief, we may treat such failure as a confession of error. *See* NRAP 31(d)(2).

Nevertheless, we have reviewed this matter and determined that reversal and remand are warranted regardless of whether we treat Holm's failure to file an answering brief as a confession of error. When the district court entered its order granting summary judgment in favor of Holm, it did not have the benefit of the supreme court's opinion in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 427 P.3d 113 (2018). In that case, the supreme court held that the pre-sale tender of nine months of past due assessments extinguishes an HOA's superpriority lien such that the purchaser takes title to the property subject to a prior deed of trust. *See id.* at 605, 427 P.3d at 116.

Below, the district court found that BNYM's predecessor sent "a conditional letter plus a check" to the HOA's foreclosure agent that "did not include any collection costs, fees or interest." It also concluded that Holm took title as a bona fide purchaser because it did not have notice of the tender and because BNYM's predecessor did not take any action to give Holm notice. However, the letter BNYM's predecessor sent in this case was virtually identical to the letter discussed in *Bank of America*, and the supreme court there held that the letter contained only "conditions on which the tendering party ha[d] a right to insist," such that it preserved the deed of trust. *Id.* at 607, 427 P.3d at 118 (stating that a plain reading of NRS

116.3116 indicates that tender of the superpriority amount, i.e., nine months of back due assessments, was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). The supreme court also concluded that no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 609-11, 427 P.3d at 119-21 (rejecting the buyer's arguments that the bank was required to record its tender or take further actions to keep the tender good). Additionally, it concluded that a party's bona fide purchaser status is irrelevant when a pre-sale tender renders the subsequent foreclosure sale void as to the superpriority amount of the lien. *See id.* at 612, 427 P.3d at 121.

In light of the foregoing, and also because the district court incorrectly concluded that the tender should have included collection fees and costs, *see Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016) (concluding that the superpriority lien provided for under the relevant version of NRS 116.3116(2) consists only of the amount of assessments due during the nine months before foreclosure and does not include collection fees and foreclosure costs), we reverse and remand this matter for the district court to reconsider its decision in light of all of the relevant precedent.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. James Crockett, District Judge  
Wolfe & Wyman LLP  
Holm International Properties, LLC  
Eighth District Court Clerk