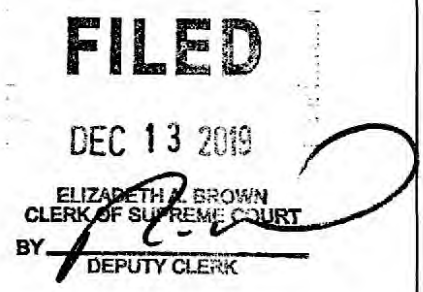
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II, INC., BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR4,
Appellant,
vs.
PREMIER ONE HOLDINGS, INC., A NEVADA CORPORATION,
Respondent.

No. 76988-COA



ORDER OF AFFIRMANCE

Wells Fargo Bank, National Association (Wells Fargo), appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

The original owner of the subject property failed to make periodic payments to the Silverado Court Landscape Maintenance Corporation (the HOA). The HOA's foreclosure agent recorded a series of notices of delinquent assessments and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. After recording the notice of default (but years before the resulting foreclosure sale), the HOA foreclosure agent sent a letter to the predecessor in interest to appellant Wells Fargo—the holder of the first deed of trust on the property—informing it that the HOA planned to nonjudicially foreclose on the property if its lien for delinquent assessments remained unsatisfied. The letter stated that "[t]he [HOA]'s Lien for

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Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder," but it further stated that "[t]his Lien may affect your position."

Ultimately, the HOA conducted its foreclosure sale, where respondent Premier One Holdings, Inc. (Premier One), purchased the property. Premier One then filed the underlying action to quiet title to the property and seeking a declaration that it acquired the property free and clear of Wells Fargo's interest. The parties later filed dueling motions for summary judgment, and the district court ruled in favor of Premier One, finding that the foreclosure sale extinguished Wells Fargo's interest and that equity did not require the court to set aside the sale. 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.

On appeal, Wells Fargo argues that summary judgment was improper because no evidence in the record shows that the HOA possessed or foreclosed upon a superpriority interest. Assuming without deciding that an HOA can opt to foreclose only upon the subpriority portion of its lien, we conclude that the record contains prima facie evidence—unrebutted by Wells Fargo—that the HOA foreclosed on the superpriority portion of its lien. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172

P.3d 131, 134 (2007) ("If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence."). Most notably, the HOA foreclosure agent's account ledger indicates that the original owner of the property failed to pay assessments in the months prior to the latest notice of delinquent assessment 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)); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21, 26, 388 P.3d 226, 231 (2017) (recognizing that under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). Moreover, the publicly recorded notices and foreclosure deed indicate that the HOA foreclosed upon the entirety of its lien, not just a portion. *See Cuzze*, 123 Nev. at 602, 172 P.3d at 134.

To the extent Wells Fargo relies upon the letter sent to its predecessor in interest stating that the HOA's lien was junior to the first deed of trust, we note that the subjective belief of the HOA foreclosure agent could not alter the legal effect of the sale. *See Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621-22, 426 P.3d 593, 596-97 (2018) (recognizing that a party's subjective belief as to the effect of a foreclosure sale cannot alter the sale's actual effect). Moreover, to the extent Wells Fargo points to the letter as evidence of fraud, unfairness, or oppression warranting setting the sale aside, we note that Wells Fargo failed to produce any evidence showing that either it or the original holder of the first deed of trust actually relied on the letter or that it had any impact on the sale. *See Nationstar*

Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. 740, 748, 405 P.3d 641, 647 (2017) (noting that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale absent additional proof of some element of fraud, unfairness, or oppression *as accounts for and brings about* the inadequacy of price" (emphasis added) (internal quotation marks omitted)).

Thus, we conclude that Wells Fargo's arguments are without merit and that no genuine issue of material fact exists to prevent summary judgment in favor of Premier One. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[1]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.

cc: Hon. Eric Johnson, District Judge
Smith Larsen & Wixom
Hong & Hong
Morris Law Center
Eighth District Court Clerk