IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,
Appellant,
vs.
GREEN TREE SERVICING, LLC, N/K/A DITECH FINANCIAL LLC; AND BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING LP, F/K/A COUNTRYWIDE HOME LOANS SERVICING LP,
Respondents.

No. 76029-COA

FILED

JAN 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien 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. The HOA foreclosed on the property and sold it to First 100, LLC (First 100), which had previously purchased the HOA's accounts receivable for delinquent assessments. First 100 presented a check in the exact amount of the superpriority portion of the HOA's lien at the sale. It then conveyed the property to a different entity, which then conveyed it to appellant RH.

RH later sued to quiet title, and both Green Tree Servicing, LLC (Green Tree)—the holder of the first deed of trust on the property—and its predecessor, Bank of America, N.A. (BOA), answered, with Green Tree also filing a counterclaim to quiet title. Each side moved for summary judgment,

and the district court ruled in favor of Green Tree and BOA (collectively the respondents). It determined that the sale was effected by fraud, unfairness, or oppression on grounds that First 100 had colluded with the HOA to purchase the property for only the amount of the superpriority portion of the HOA's lien. The district court focused specifically on the extent to which First 100 had inside information concerning the amount of the superpriority portion. It further determined that First 100 "completely controlled the sale" as "evidenced by the fact that [it] appeared at the HOA sale with a check in the amount of [the superpriority portion of the lien]." The district court also noted that, in light of First 100's ownership of the HOA's receivables, First 100 did not actually pay any funds to purchase the property. On those grounds, the district court set the sale aside and concluded that RH had no interest in the property and that the deed of trust remained valid. 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, RH argues that the Supreme Court of Nevada has previously recognized that factoring agreements of the sort entered into by First 100 and the HOA are not collusive in nature. *See W. Sunset 2050 Tr. v. Nationstar Mortg., LLC*, 134 Nev. 352, 355, 420 P.3d 1032, 1036 (2018) (defining a "factoring agreement" as "the sale of accounts receivable of a firm to a factor at a discounted price" and noting that such agreements give

the seller "immediate access to cash" and ensure that "the factor assumes the risk of loss" (internal quotation marks omitted)). However, we disagree with RH's assessment of the supreme court's holding in *West Sunset*, which was only that factoring agreements do not deprive HOAs of standing to foreclose; that case did not involve—and the court did not address—a situation where the purchaser under the factoring agreement also went on to purchase the subject property at an HOA foreclosure sale or whether such an event could amount to fraud, unfairness, or oppression. 134 Nev. at 355-57, 420 P.3d at 1035-37. Thus, we reject RH's argument on this point.

RH also argues that there was no evidence that the agreement or First 100's inside information actually brought about the inadequate price paid at the foreclosure sale (i.e., there is no evidence that other bidders were in any way prevented from submitting bids higher than the price First 100 paid). *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)). However, in light of the grossly inadequate sales price, we conclude that the district court did not abuse its discretion in determining that there was at least slight evidence of unfairness in the sale to support an equitable set aside. *See Res. Grp., LLC ex rel. E. Sunset Rd. Tr. v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 55, 437 P.3d 154, 160 (2019) ("A district court's decision to set aside a foreclosure sale on equitable grounds is subject to an abuse of discretion standard of review."); *Nationstar*, 133 Nev. at 741, 405 P.3d at 643 ("[W]here the inadequacy of the price is great, a court may grant relief based on slight evidence of fraud, unfairness, or oppression."). As courts in other unpublished cases involving materially similar agreements between

First 100 and an HOA have recognized, when an entity such as First 100 purchases the subject property at the foreclosure sale for a grossly inadequate price, there is at least slight evidence of unfair collusion to chill bidding sufficient to support setting the sale aside. *See Lahrs Family Tr. v. JPMorgan Chase Bank, N.A.*, Docket No. 74059 (Order of Affirmance, August 27, 2019) (citing *Country Express Stores, Inc. v. Sims*, 943 P.2d 374, 378 (Wash. Ct. App. 1997) (noting that "[t]o establish chilled bidding, the challenger must establish the bidding was actually suppressed, which can sometimes be shown by an inadequate sales price")); *see also Wells Fargo Bank, N.A. v. First 100, LLC*, No. 3:17-cv-00062-MMD-WGC, 2019 WL 919585, at *4 (D. Nev. Feb. 25, 2019); *cf. Golden v. Tomiyasu*, 79 Nev. 503, 516, 387 P.2d 989, 995 (1963) (noting that if the sales price was grossly inadequate and the sale was "collusively or in any other manner conducted for the benefit of the purchaser," then "the sale may be set aside" (quoting *Schroeder v. Young*, 161 U.S. 334, 338 (1896))).

Accordingly, we affirm the district court's order setting the sale aside and granting summary judgment in favor of the respondents. In light of our ruling, we need not consider the respondents' proffered alternative grounds for affirmance.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Gloria Sturman, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk