

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as Trustee for Trust 2003-NC2,  
Mortgage Pass-Through Certificates, Series  
2003-NC2 agent of Morgan Stanley Dean  
Witter Capital I Inc.,

Plaintiff-Appellee,

v.

SATICOY BAY LLC SERIES 1236 DUSTY  
CREEK STREET,

Defendant-Appellant,

and

DURANGO TRAILS HOMEOWNERS  
ASSOCIATION, INC.; HOMEOWNER  
ASSOCIATION SERVICES, INC.,

Defendants.

No. 20-15432

D.C. No.  
2:17-cv-01667-APG-EJY

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Andrew P. Gordon, District Judge, Presiding

Argued and Submitted November 16, 2022  
San Jose, California

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Real property in Nevada was sold at a homeowners' association ("HOA") foreclosure sale after the homeowner failed to pay required HOA assessments. The holder of the first deed of trust, Deutsche Bank National Trust Co., sued the current owner of the property, seeking a declaration that its interest in the property survived the foreclosure sale. The district court awarded summary judgment to Deutsche Bank, and defendant Saticoy Bay LLC appealed. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court's grant of summary judgment, *Travelers Prop. Cas. Co. v. ConocoPhillips Co.*, 546 F.3d 1142, 1145 (9th Cir. 2008). "We may affirm a district court's judgment on any ground supported by the record, whether or not the decision of the district court relied on the same grounds or reasoning we adopt." *Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 926 (9th Cir. 2003). We affirm.

1. The Nevada Supreme Court recently held that the relevant statute of limitations is four years. *U.S. Bank, N.A. v. Thunder Props., Inc.*, 503 P.3d 299, 304 (Nev. 2022). Deutsche Bank filed its complaint less than four years after the foreclosure sale, and its action is therefore timely.

2. Under Nevada law, an HOA lien consists of two parts: a "superpriority" portion and a "subpriority" portion. *See U.S. Bank, N.A. v. S. Highlands Cmty. Ass'n.*, 999 F.3d 1185, 1188 (9th Cir. 2021). Although the superpriority portion of

the lien takes priority over the first deed of trust at the time of a foreclosure sale, *see* Nev. Rev. Stat. § 116.3116(2)-(3), the subpriority portion does not. Therefore, if a homeowner’s default is cured as to the superpriority portion of the lien, a foreclosure on the remaining (subpriority) portion will not extinguish a first deed of trust. In such a situation, the sale is “void as to the holder of the first deed of trust.” *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 459 P.3d 227, 228 (Nev. 2020).

Deutsche Bank introduced evidence showing that the unpaid HOA assessments as of the recording of the Notice of Lien were \$410. Saticoy Bay does not contest the accuracy of this figure but argues that the superpriority portion of the lien is always nine months’ worth of HOA assessments—regardless of payments that the homeowner made. That is incorrect: Nevada law gives an HOA “a superpriority lien on an individual homeowner’s property for *up to* nine months of *unpaid* HOA dues.” *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 409 (Nev. 2014) (en banc) (emphases added). We therefore conclude that the superpriority portion of the lien was \$410.

Saticoy Bay concedes that the former homeowner paid at least \$630 to the HOA during the relevant period. And it has not offered any evidence to rebut Deutsche Bank’s evidence that the HOA applied payments to the oldest past-due assessments. Accordingly, the former homeowner’s payments cured the

superpriority portion of the lien, rendering the foreclosure sale void as to Deutsche Bank's interest in the property.

3. Under Nevada law, a “void sale, in contrast to a voidable sale, defeats the competing title of even a bona fide purchaser for value.” *U.S. Bank, Nat’l Ass’n ND v. Res. Grp., LLC*, 444 P.3d 442, 448 (Nev. 2019). Because the sale is void, it makes no difference whether Saticoy Bay is a bona fide purchaser.

**AFFIRMED.**