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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5 PHH MORTGAGE CORPORATION,
6 Plaintiff,

Case No. 2:16-cv-02795-MMD-NJK

7 v.

ORDER

8 SATICOY BAY LLC SERIES 7712
9 BEACH FALLS, a Nevada limited liability
10 company; DESERT CREEK OWNERS
ASSOCIATION, a Nevada non-profit
11 corporation; ARLENE E. VEGA, an
individual.,

Defendants.

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13 DESERT CREEK HOMEOWNERS
ASSOCIATION, INC.,

Third Party Plaintiff,

14 v.

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16 NEVADA ASSOCIATION SERVICES,
INC.,

Third Party Defendant.

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19 **I. SUMMARY**

20 This dispute arises from the foreclosure sale of property to satisfy a homeowners'
21 association lien. Before the Court are Defendant Saticoy Bay LLC Series 7712 Beach
22 Falls' ("Saticoy") and Plaintiff PHH Mortgage Corporation's ("PHH") cross-motions for
23 summary judgment. (ECF Nos. 71, 72.) The Court has reviewed Defendant Desert Creek
24 Owners Association, Inc.'s ("HOA") responses. (ECF Nos. 75, 76.) No other responses
25 were filed, nor were any replies filed. For the following reasons, the Court grants Saticoy's
26 motion and denies PHH's motion. The Court also dismisses the HOA's third party
27 complaint as moot.

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1 **II. BACKGROUND**

2 The following facts are undisputed unless otherwise indicated.

3 Arlene E. Vega (“Borrower”) purchased residential property (“Property”) located
4 within the HOA at 7712 Beach Falls Court, Las Vegas, Nevada in 2010 with a loan
5 (“Loan”) secured by a first deed of trust (“DOT”). (ECF No. 71-3 at 2-3, 14.) The DOT was
6 assigned to PHH by assignment recorded April 27, 2012. (ECF No. 71-4 at 3.)

7 The HOA recorded the following notices against the Property between June and
8 December 2013: notice of delinquent assessment lien (ECF No. 71-5 at 2); notice of
9 default and election to sell (ECF No. 71-7 at 2-3); and notice of trustee’s sale (ECF No.
10 71-9 at 2-3).

11 The HOA recorded a foreclosure deed (“Foreclosure Deed”) against the Property
12 on January 16, 2014. (ECF No. 72-7 at 2.) The Foreclosure Deed indicates that the HOA
13 sold the Property to Saticoy for \$40,500 on January 3, 2014 (“HOA Sale”). (Id.)

14 PHH asserts claims for declaratory relief, quiet title, and unjust enrichment against
15 Saticoy in the First Amended Complaint (“FAC”). (ECF No. 7 at 6-10.) PHH does not
16 assert claims against the HOA or the Borrower. In the prayer for relief, PHH primarily
17 seeks a declaration that the HOA Sale is void and did not extinguish the DOT. (Id. at 11.)

18 The HOA filed a third party complaint against NAS asserting claims for express
19 and implied indemnity, contribution, apportionment, breach of contract, and declaratory
20 relief. (ECF No. 18 at 10-14.)

21 **III. LEGAL STANDARD**

22 “The purpose of summary judgment is to avoid unnecessary trials when there is
23 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,
24 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
25 pleadings, the discovery and disclosure materials on file, and any affidavits “show there
26 is no genuine issue as to any material fact and that the movant is entitled to judgment as
27 a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is “genuine”
28 if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the

1 nonmoving party and a dispute is “material” if it could affect the outcome of the suit under
2 the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where
3 reasonable minds could differ on the material facts at issue, however, summary judgment
4 is not appropriate. See *id.* at 250-51. “The amount of evidence necessary to raise a
5 genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’
6 differing versions of the truth at trial.” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th
7 Cir. 1983) (quoting *First Nat1 Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)). In
8 evaluating a summary judgment motion, a court views all facts and draws all inferences
9 in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach &*
10 *Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

11 The moving party bears the burden of showing that there are no genuine issues of
12 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the
13 moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the
14 motion to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*,
15 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings but must
16 produce specific evidence, through affidavits or admissible discovery material, to show
17 that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),
18 and “must do more than simply show that there is some metaphysical doubt as to the
19 material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita*
20 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere existence
21 of a scintilla of evidence in support of the plaintiff’s position will be insufficient.” *Anderson*,
22 477 U.S. at 252.

23 Further, “when parties submit cross-motions for summary judgment, ‘[e]ach motion
24 must be considered on its own merits.’” *Fair Hous. Council of Riverside Cty., Inc. v.*
25 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (citations omitted) (quoting William
26 W. Schwarzer, et al., *The Analysis and Decision of Summary Judgment Motions*, 139
27 *F.R.D.* 441, 499 (Feb. 1992)). “In fulfilling its duty to review each cross-motion separately,
28 the court must review the evidence submitted in support of each cross-motion.” *Id.*

1 **IV. DISCUSSION**

2 In analyzing the merits of the parties' arguments, the Court presumes that the HOA
3 Sale extinguished the DOT and that Saticoy thus owns the Property free and clear of the
4 DOT. See Wells Fargo Bank, N.A. v. SFR Invs. Pool 1, LLC, No. 3:15-cv-00240-MMD-
5 CBC, 2019 WL 470901, at *3 (D. Nev. Feb. 6, 2019) (citing SFR Invs. Pool 1, LLC v. U.S.
6 Bank, N.A., 334 P.3d 408, 419 (Nev. 2014)). The Court finds that PHH fails to rebut this
7 presumption and addresses each of its relevant arguments below.

8 PHH argues that it is entitled to summary judgment because Saticoy purchased a
9 mere lien interest in the Property rather than title to the Property. (ECF No. 72 at 3.) PHH
10 cites the language in the foreclosure deed stating that the HOA "does hereby grant and
11 convey . . . all of its rights, title and interest in and to [the Property]." (ECF No. 72 at 4
12 (citing ECF No. 72-7 at 2).) The Court finds PHH's argument unpersuasive because
13 Saticoy obtained title to the Property when it placed the highest bid at the HOA Sale. See
14 NRS § 116.31164(3)(a) (2013) ("After the sale, the person conducting the sale
15 shall . . . deliver to the purchaser . . . a deed . . . which conveys to the grantee all title of
16 the unit's owner to the unit."); see also Lakeview Loan Servicing, LLC v. SFR Invs. Pool
17 1, LLC, No. 2:16-cv-01648-GMN-CWH, 2019 WL 1410885, at *5 (D. Nev. Mar. 28, 2019)
18 (citing same).

19 PHH further argues that it is entitled to summary judgment on equitable grounds.
20 (ECF No. 72 at 5.) The Nevada Supreme Court has held that "courts retain the power to
21 grant equitable relief from a defective foreclosure sale." Shadow Wood Homeowners
22 Ass'n v. New York Cmty. Bancorp., 366 P.3d 1105, 1110 (Nev. 2016). For instance, a
23 court may set aside a sale where there is inadequacy of price as well as proof of slight
24 evidence of fraud, unfairness, or oppression. Nationstar Mortg., LLC v. Saticoy Bay LLC
25 Series 2227 Shadow Canyon, 405 P.3d 641, 643, 648 (Nev. 2017) (also stating
26 inadequacy of price "should be considered with any alleged irregularities in the sale
27 process to determine whether the sale was affected by fraud, unfairness, or oppression").

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1 Adequacy of sales price aside, PHH has not demonstrated fraud, unfairness or
2 oppression. PHH argues that the Foreclosure Deed did not convey title to the Property as
3 required by NRS § 116.31164 (ECF No. 72 at 5), but the Court rejected this argument
4 supra. PHH further argues that the amounts listed in the notices related to the HOA Sale
5 were incorrect and included amounts (fines and penalties) not allowed under Nevada law.
6 (See id.) But PHH has not argued or alleged how the inclusion of fines and penalties
7 affected the sales price. (See id.) “[T]he fraud, unfairness, or oppression must have
8 ‘affected the sales price.’” Bank of N.Y. Mellon v. Nev. Ass’n Servs., Inc., No. 2:16-cv-
9 00370-APG-BNW, 2019 WL 2427938, at *4 (D. Nev. June 10, 2019) (quoting Res. Grp.,
10 LLC as Tr. of E. Sunset Rd. Tr. v. Nev. Ass’n Servs., Inc., 437 P.3d 154, 161 (Nev. 2019)
11 (en banc)); see also S. Capital Pres., LLC v. GSAA Home Equity Tr. 2006-5, 414 P.3d
12 808, 2018 WL 1447727, at *1 (Nev. 2018) (“[A]lthough counsel argued that the notices’
13 inclusion of improperly incurred fees was unfair, there was no actual evidence supporting
14 how inclusion of those fees either misled respondent or otherwise brought about the low
15 sales price.”).

16 PHH further argues that an HOA sale cannot extinguish a DOT insured by the
17 FHA. (ECF No. 72 at 5.) The Court already rejected this argument when PHH raised it in
18 its earlier motion for partial summary judgment and rejects it again now for the same
19 reasons. (See ECF No. 62 at 2.)

20 Accordingly, the Court grants Saticoy’s motion for summary judgment and denies
21 PHH’s motion for summary judgment.

22 **V. THE HOA’S THIRD PARTY COMPLAINT**

23 The HOA’s claims in the third party complaint are largely contingent on PHH
24 recovering against the HOA. (See, e.g., ECF No. 18 at 11 (“[I]f [PHH] recovers against
25 HOA, then HOA is entitled to implied indemnity from the NAS.”).) Given that PHH will not
26 recover against the HOA in this action, the Court dismisses the HOA’s third party
27 complaint as moot.

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1 **VI. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several
3 cases not discussed above. The Court has reviewed these arguments and cases and
4 determines that they do not warrant discussion as they do not affect the outcome of the
5 motions before the Court.

6 It is therefore ordered that Saticoy's motion for summary judgment (ECF No. 71)
7 is granted. The Court finds that the HOA Sale extinguished the DOT and that Saticoy took
8 the Property free and clear of the DOT.

9 It is further ordered that PHH's motion for summary judgment (ECF No. 72) is
10 denied.

11 It is further ordered that the HOA's third party complaint is dismissed as moot.
12 The Clerk of the Court is instructed to enter judgment accordingly and close this
13 case.

14 DATED THIS 18th day of June 2019.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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