

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2019

FOR THE NINTH CIRCUIT

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

BANK OF AMERICA, N.A.,

Plaintiff-Appellee,

v.

ALVIN SORIANO,

Defendant-Appellant,

and

CORTEZ HEIGHTS HOMEOWNERS  
ASSOCIATION,

Defendants.

No. 18-16595

D.C. No. 2:16-cv-00604-GMN-  
CWH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Gloria M. Navarro, District Judge, Presiding

Submitted November 18, 2019\*\*

Before: CANBY, TASHIMA, and CHRISTEN, Circuit Judges.

Alvin Soriano appeals pro se from the district court's summary judgment in

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Bank of America, N.A.'s diversity action alleging state law claims related to a foreclosure sale on real property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Progressive Cas. Ins. Co. v. Owen*, 519 F.3d 1035, 1037 (9th Cir. 2008). We vacate and remand.

The district court granted summary judgment, relying on this court's decision in *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), that the notice scheme under which the foreclosure sale was conducted was facially unconstitutional. However, after the district court's order was entered, this court in *Bank of America, N.A. v. Arlington West Twilight Homeowners Association*, 920 F.3d 620 (9th Cir. 2019), held that *Bourne Valley's* analysis no longer controlled in light of the Nevada Supreme Court's decision in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113 (Nev. 2018). Because the district court did not have the benefit of the decision in *Arlington West* when it entered its order, we vacate summary judgment and remand for further proceedings. On remand, the district court should consider in the first instance alternate bases for summary judgment and may consider supplemental filings.

We do not consider documents not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

The parties shall bear their own costs on appeal.

**VACATED and REMANDED.**