

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 17 2020

FOR THE NINTH CIRCUIT

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

BANK OF AMERICA, NA, FKA  
Countrywide Home Loans Servicing LP,  
successor by merger to on behalf of BAC  
Home Loans Servicing LP,

Plaintiff-Appellee,

v.

KENNETH BERBERICH,

Defendant-Appellant,

and

SUNRISE HIGHLANDS COMMUNITY  
ASSOCIATION; ALESSI & KOENIG,  
LLC,

Defendants.

No. 19-15924

D.C. No.  
2:16-cv-00279-GMN-CWH

MEMORANDUM\*

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

Submitted December 11, 2020\*\*  
San Francisco, 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.

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

Before: TASHIMA, TALLMAN, and MURGUIA, Circuit Judges.

Defendant-Appellant Kenneth Berberich appeals the district court's grant of partial summary judgment in favor of Plaintiff-Appellee Bank of America, N.A. ("Bank of America"). Reviewing de novo, *CitiMortgage, Inc. v. Corte Madera Homeowners Ass'n*, 962 F.3d 1103, 1106 (9th Cir. 2020), we affirm.

Bank of America tendered nine months of unpaid assessments to Sunrise Highlands Homeowners Association ("Sunrise Highlands HOA") to satisfy the HOA's superpriority lien on the subject property and thereby establish Bank of America's superior interest as the holder of the first deed of trust. Berberich argues that the district court erred in concluding Bank of America's tender was sufficient to protect Bank of America's interest because it did not include a "reserve" for continuing nuisance abatement charges and was impermissibly conditional.

1. The superpriority portion of an HOA's lien "includes only charges for maintenance and nuisance abatement, and nine months of unpaid assessments." *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC ("Diamond Spur")*, 427 P.3d 113, 117 (Nev. 2018) (en banc). "If the HOA's ledger does not show any charges for maintenance or nuisance abatement, a tender of nine months of HOA dues is sufficient" to satisfy the superpriority portion of the HOA's lien. *Bank of Am., N.A. v. Arlington W. Twilight Homeowners Ass'n*, 920 F.3d 620, 623 (9th Cir.

2019). Because the ledger provided by Sunrise Highlands HOA did not indicate that the property had incurred any charges for maintenance or nuisance abatement, the tender of nine months assessments was sufficient to satisfy Sunrise Highlands HOA's superpriority lien.

2. Bank of America's tender did not contain an impermissible condition. *See Diamond Spur*, 427 P.3d at 118 (holding that a nearly identical letter accompanying payment contained no impermissible conditions).

Therefore, the district court did not err in concluding Bank of America's tender was sufficient to satisfy Sunrise Highlands HOA's superpriority lien and protect Bank of America's interest as the holder of the first deed of trust.

**AFFIRMED.**