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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 BANK OF AMERICA, N.A.,

Case No. 2:16-cv-00438-MMD-PAL

7 Plaintiff,

ORDER

8 v.

9 INSPIRADA COMMUNITY
ASSOCIATION; SATICOY BAY, LLC
SERIES 2080 ARTISTIC FLAIR WALK,

10 Defendants.

11
12 SATICOY BAY, LLC SERIES 2080
ARTISTIC FLAIR WALK,

13 Counterclaimant,

14 v.

15 BANK OF AMERICA, N.A.,

16 Counter-Defendant.

17 **I. SUMMARY**

18 This dispute arises from the foreclosure sale (“HOA Sale”) of real property located
19 at 2080 Artistic Flair Walk, Henderson, NV, 89044 (“Property”) to satisfy a homeowners’
20 association lien. (See, e.g., ECF No. 1 at 2.) Two motions—essentially cross-motions—
21 are currently pending before the Court: (1) Plaintiff/Counter-defendant, Bank of America,
22 N.A. (“BANA”) seeks partial summary judgment on its quiet title/declaratory judgment
23 claim and on Defendant/Counterclaimant Saticoy Bay LLC Series 2080 Artistic Flair
24 Walk’s (“Saticoy”) counterclaims for the same relief; and (2) Saticoy requests that the
25 Court grant summary judgment on its counterclaims. (ECF Nos. 84, 85; ECF No. 1 at 6;
26 ECF No. 9 at 5–6.) Because the Court agrees with BANA that it properly tendered the

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1 superpriority amount, the Court grants BANA's motion for partial summary judgment and
2 denies Saticoy's motion for summary judgment.¹

3 **II. BACKGROUND**

4 The following facts are undisputed unless otherwise indicated.

5 Teresa Cruz financed the purchase of the Property in 2010 with a \$172,189.00 loan
6 ("Loan") from KBA Mortgage, LLC. (ECF No. 84-1.) The Loan was secured by a deed of
7 trust ("DOT") against the Property. (*Id.*) The DOT named Mortgage Electronic Registration
8 Systems, Inc. ("MERS") as the beneficiary. (*Id.* at 3.) An assignment of the DOT to BANA
9 was recorded in September 2012. (ECF No. 84-2.)

10 Cruz filed for bankruptcy in December 2011, which remained open until February
11 22, 2013. (ECF Nos. 84-3, 84-4.)

12 Defendant Inspirada Community Association ("HOA"), through its trustee Leah
13 Johnson Song & Gruchow ("LJS&G"), recorded a notice of delinquent lien assessment
14 against the Property in December 2012. (ECF No. 84-5.) This notice provided that
15 assessments were "\$285.00 per quarter," and that Cruz owed a total amount of \$1,325.27
16 as of November 27, 2012. (*Id.* at 2.)

17 The HOA recorded a notice of default and election to sell in January 2013, which
18 noted that Cruz then owed \$2,388.83. (ECF No. 84-6 at 2.) This noticed provided no
19 superpriority amount. (*See generally* ECF No. 84-6.)

20 In February and March 2013, BANA sent LJS&G letters requesting that LJS&G
21 identify the superiority amount of the HOA's lien. (ECF No. 84-8 at 3, 6–10.) In response,
22 LJS&G refused to identify the superpriority amount absent authorization from the
23 homeowner, and instead provided the total amount due for the entire HOA lien. (ECF No.
24 84-8 at 3, 12–15.) The document LJS&G provided identified a quarterly assessments
25 amount of \$285. (*Id.* at 13, 15.) Based on the \$285 quarterly assessments amount, BANA

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28 ¹In addition to the motions, the Court has considered the respective responses
(ECF Nos. 87, 90, 94) and replies (ECF Nos. 91, 93, 97).

1 calculated the nine-months of assessments to satisfy the superpriority amount as \$855.00
2 and sent LJS&G a check for that amount in April 2013. (*Id.* at 3, 15, 18–19.)

3 An LJS&G employee, Rachel Stewart, signed a statement acknowledging receipt
4 of the check on April 24, 2013. (*Id.* at 3, 21; *see also* ECF No. 84-9 at 8 (LJS&G deposition
5 testimony admitting that a Rachel worked at LJS&G’s reception desk).) It is uncontested
6 that LJS&G rejected the check. (ECF No. 84-8 at 4 (citing ECF No. 84-8 at 23
7 (documenting “8/14/2013. EMF AKJ re: Closing . . . Payoff Rejected. 13-H0122. Cruz”));
8 *cf id.* at 21 (noting tendered check as MBBW# 13-H0122); *see generally* ECF Nos. 85, 91,
9 94.)

10 LJS&G recorded a notice of the HOA Sale in August 2013 (ECF No. 84-7), and sold
11 the Property to Saticoy in October 2014, for \$109,600. (ECF No. 84-11 at 3.)

12 **III. LEGAL STANDARD**

13 “The purpose of summary judgment is to avoid unnecessary trials when there is no
14 dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18
15 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,
16 the discovery and disclosure materials on file, and any affidavits “show that there is no
17 genuine issue as to any material fact and that the moving party is entitled to a judgment
18 as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is
19 “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder could
20 find for the nonmoving party and a dispute is “material” if it could affect the outcome of the
21 suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

22 The moving party bears the burden of showing that there are no genuine issues of
23 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the
24 moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the
25 motion to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*,
26 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings but must
27 produce specific evidence, through affidavits or admissible discovery material, to show
28 that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),

1 and “must do more than simply show that there is some metaphysical doubt as to the
2 material facts.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting
3 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere
4 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”
5 *Anderson*, 477 U.S. at 252. Moreover, a court views all facts and draws all inferences in
6 the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach &*
7 *Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

8 **IV. DISCUSSION**

9 Saticoy and the HOA make numerous arguments in opposition to BANA’s motion
10 for partial summary judgment. (ECF Nos. 90, 94.) Saticoy additionally argues in support
11 of its own motion for summary judgment. (ECF Nos. 85, 91.) The Court only addresses
12 the parties’ arguments regarding tender as the Court finds the issue dispositive in this
13 case.

14 BANA argues that it is entitled to summary judgment because it tendered the
15 correct amount to satisfy the superpriority lien. (ECF No. 84 at 2, 5–8; ECF No. 93 (reply
16 regarding Saticoy’s opposition) at 2–6; ECF No. 97 (reply regarding the HOA’s opposition)
17 at 5.)² The Court agrees. Each of Saticoy’s arguments on the issue³—that “good faith
18 rejection” by the HOA of BANA’s offered payment of the superiority amount rendered the
19 offer ineffective; that BANA’s offer of payment was conditional; that the tender needed to
20 be recorded; and that BANA needed to keep its tender good—have all been rejected by
21 the Nevada Supreme Court (ECF No. 85 at 20–28; ECF No. 91 at 2–12). *See Bank of*
22 *Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 118–121 (Nev. 2018), *as amended on*
23 *denial of reh’g* (Nov. 13, 2018); *see also Bank of Am., N.A. v. Thomas Jessup, LLC Series*
24 *///*

25 ²The HOA filed its response later the same day BANA filed its reply to Saticoy’s
26 opposition—per stipulation the HOA’s response was submitted well after the initial
27 deadline for filing response. (*Compare* ECF No. 83 *with* ECF No. 93; *see also* ECF Nos.
84, 96.)

28 ³The HOA does not specifically respond to BANA’s argument that BANA’s tender
preserved the DOT. (*See generally* ECF No. 94.)

1 VII (“*Jessup*”), No. 73785, 2019 WL 1087513, at *4 (Nev. Mar. 7, 2019) (even where a
2 check is not sent to the HOA, an offer to pay a not-yet-determined superpriority amount
3 plus a rejection of the offer preserves the first deed of trust).

4 In fact, Saticoy appears to acknowledge the dispositive effect of *Bank of Am., N.A.*,
5 but contends the decision is wrong. (ECF No. 85 at 20–28; ECF No. 91 at 2–12.) However,
6 this Court is bound by the Nevada Supreme Court’s interpretation of Nevada law. See
7 *Kwan v. San Medica Int’l*, 854 F.3d 1086, 1093 (9th Cir. 2017) (explaining that federal
8 courts must ascertain what the state law is and apply it for the vindication of state rights);
9 *Forrester v. S. Pac. Co.*, 134 P. 753, 759 (Nev. 1913) (highlighting that the construction
10 placed on a statute by the highest court of a state controls in federal court, so long as such
11 construction does not violate federal laws, even where “the federal court may believe the
12 opinion of the state court is improper”).

13 Accordingly, the Court finds that BANA is entitled to summary judgment on its quiet
14 title/declaratory judgment claim and Saticoy’s counterclaim for the same. The Court
15 declares that the HOA Sale did not extinguish BANA’s DOT. The Court therefore denies
16 Saticoy’s motion for summary judgment and grants BANA’s motion.

17 **V. CONCLUSION**

18 The Court notes that the parties made several arguments and cited to several cases
19 not discussed above. The Court has reviewed these arguments and cases and determines
20 that they do not warrant discussion as they do not affect the outcome of the motions before
21 the Court.

22 It is therefore ordered that BANA’s motion for partial summary judgment on its quiet
23 title/declaratory judgment claim and Defendant Saticoy’s counterclaim for the same (ECF
24 No. 84) is granted. The Court declares that the HOA Sale did not extinguish the DOT and
25 the DOT thus continues to encumber the Property. In light of the Court’s ruling in favor of
26 BANA that the HOA Sale did not extinguish the DOT, BANA’s remaining claims (see ECF
27 No. 1) are dismissed as moot.

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It is further ordered that Saticoy's motion for summary judgment (ECF No. 85) is denied.

It is further ordered that the Clerk of Court enter judgment in BANA's favor in accordance with this order and close the case.

DATED THIS 12th day of March 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE