

1 The parties are familiar with the facts so I do not repeat them here except where
2 necessary. I grant Nationstar’s motion because Bank of America tendered the superpriority
3 amount, thereby extinguishing the superpriority lien and rendering the sale void as to the deed of
4 trust. I dismiss as moot Nationstar’s alternative damages claims against Copperfield and RMI.

5 **I. ANALYSIS**

6 Summary judgment is appropriate if the movant shows “there is no genuine dispute as to
7 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
8 56(a), (c). A fact is material if it “might affect the outcome of the suit under the governing law.”
9 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if “the evidence
10 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

11 The party seeking summary judgment bears the initial burden of informing the court of
12 the basis for its motion and identifying those portions of the record that demonstrate the absence
13 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
14 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
15 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531
16 (9th Cir. 2000); *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018) (“To defeat
17 summary judgment, the nonmoving party must produce evidence of a genuine dispute of material
18 fact that could satisfy its burden at trial.”). I view the evidence and reasonable inferences in the
19 light most favorable to the non-moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523
20 F.3d 915, 920 (9th Cir. 2008).

21 Under Nevada law, a “first deed of trust holder’s unconditional tender of the superpriority
22 amount due results in the buyer at foreclosure taking the property subject to the deed of trust.”
23 *Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) (en banc). To

1 be valid, tender must be for “payment in full” and must either be “unconditional, or with
2 conditions on which the tendering party has a right to insist.” *Id.* at 118.

3 Nationstar has established that it tendered the superpriority amount in full. The HOA
4 assessment was \$36 per month. ECF No. 44-7 at 14. Prior to the HOA foreclosure sale, Bank of
5 America tendered \$324.00 to RMI to cover the superpriority amount of nine months of
6 assessments. *Id.* at 18-20; ECF No. 44-8 at 10-11. RMI refused to accept the check. ECF Nos.
7 44-7 at 22; 44-8 at 11. Saticoy has presented no contrary evidence in response. Consequently,
8 no genuine dispute remains that the superpriority lien was extinguished and the property remains
9 subject to the deed of trust. *Bank of Am., N.A.*, 427 P.3d at 121.

10 Saticoy contends I should weigh the equities in its favor as a bona fide purchaser. It also
11 argues Nationstar waived its tender, should be estopped from asserting it, and has unclean hands
12 because it did not take other action to stop the sale or inform others about its tender attempt.

13 “[T]ender of the superpriority portion of an HOA lien satisfies that portion of the lien by
14 operation of law.” *Bank of Am., N.A.*, 427 P.3d at 120. Because “valid tender cured the default
15 as to the superpriority portion of the HOA’s lien, the HOA’s foreclosure on the entire lien
16 resulted in a void sale as to the superpriority portion.” *Id.* at 121. A “party’s status as a [bona
17 fide purchaser] is irrelevant when a defect in the foreclosure proceeding renders the sale void.”
18 *Id.* For these same reasons, I do not weigh the equities if tender was valid because “the voiding
19 of the foreclosure sale as to the superpriority portion of the lien is ultimately the result of the
20 operation of law and not equitable relief.” *Salomon v. Bank of Am., N.A.*, No. 75200-COA, 2019
21 WL 3231009, at *2 n.3 (Nev. App. July 17, 2019).¹ Finally, Nationstar “has not waived its right
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23 ¹ Saticoy also argues Nationstar cannot resort to equity because it has an adequate remedy at law. Even if Nationstar had to resort to equity, in similar cases I have rejected this argument that lienholders like Nationstar have an adequate remedy at law. *See, e.g., Bank of Am., N.A. v.*

1 to protect its deed of trust, is not estopped from asserting that right, nor does it have unclean
2 hands because it allowed [the HOA’s] foreclosure to proceed without interceding to halt the
3 foreclosure” because Bank of America satisfied the superpriority portion of the lien before the
4 foreclosure, so it “was under no obligation to intercede or halt the foreclosure once it protected
5 its own interest.” *Bank of New York Mellon v. Green Valley S. Owners Ass’n*, No. 1, No. 2:17-
6 CV-2024-KJD-EJY, 2019 WL 4393356, at *6 (D. Nev. Sept. 13, 2019); *see also Bank of*
7 *America, N.A.*, 427 P.3d at 119-21 (tender need not be recorded or deposited into court).

8 Finally, Saticoy requests that if I determine the deed of trust was not extinguished, I
9 should set aside the sale rather than determine that Saticoy took title to the property subject to the
10 deed of trust. ECF No. 49 at 15. I decline to consider this possibility because Saticoy’s request is
11 undeveloped and unsupported. Saticoy does not identify what claim in this case would support
12 setting aside the sale or on what factual or legal basis I would do so. Saticoy’s counterclaim did
13 not request as relief that if tender was valid, I should set aside the sale. It could have raised that
14 possibility because tender was alleged in Nationstar’s complaint. Further, Saticoy does not
15 engage in any weighing of the equities to determine whether setting aside the sale is the proper
16 result. For example, it makes no reference to how unwinding the sale would affect Copperfield
17 or the former homeowner, who is not a party to this action. Nor does it address whether it has
18 received benefits from the property in the interim (such as rental income), how those benefits
19 should be weighed, or what should happen to those benefits if the sale is unwound.

20 In sum, Nationstar has shown that it tendered the superpriority portion of the HOA’s lien,
21 thereby rendering the sale void as to the deed of trust. Saticoy has not presented evidence raising
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23 *Woodcrest Homeowners Ass’n*, No. 2:15-cv-01024-APG-GWF, 2019 WL 3947912, at *2 (D.
Nev. Aug. 21, 2019). I again reject the argument here.

1 a genuine dispute. Consequently, Saticoy purchased the property subject to the deed of trust. I
2 therefore dismiss as moot Nationstar's alternative damages claims against Copperfield and RMI.

3 **II. CONCLUSION**

4 I THEREFORE ORDER that plaintiff Nationstar Mortgage LLC's motion for summary
5 judgment (**ECF No. 44**) is **GRANTED**. The clerk of court is instructed to enter judgment in
6 favor of plaintiff Nationstar Mortgage LLC and against defendant Saticoy Bay LLC Series 6132
7 Peggotty as follows: It is declared that the homeowners association's non-judicial foreclosure
8 sale conducted on November 26, 2014 did not extinguish the deed of trust and the property
9 located at 6132 Peggotty Avenue in Las Vegas, Nevada remains subject to the deed of trust.

10 I FURTHER ORDER that plaintiff Nationstar Mortgage LLC's alternative damages
11 claims against defendants Copperfield Homeowners Association and RMI Management LLC are
12 **DISMISSED** as moot.

13 I FURTHER ORDER the clerk of court to close this case.

14 DATED this 13th day of January, 2020.

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18 ANDREW P. GORDON
19 UNITED STATES DISTRICT JUDGE
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