

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BANK OF AMERICA, N.A.,

Case No. 3:16-cv-00146-MMD-WGC

Plaintiff,

ORDER

GRAND SIERRA RESORT UNIT- OWNERS' ASSOCIATION; et al.,

Defendants.

I. SUMMARY

This case arises from the foreclosure sale of property to satisfy a homeowners' association lien. Before the Court is Plaintiff Bank of America, N.A.'s motion for summary judgment (the "Motion").¹ (ECF No. 78.) Because the Court agrees with Plaintiff that it properly tendered the superpriority amount—and as explained below—the Court will grant Plaintiff's Motion and resolve this case.

II. RELEVANT BACKGROUND

The following facts are undisputed unless otherwise indicated.

In March 2007, Melvin H. Cheah and Amanda S. Cheah (“Borrowers”) obtained a loan for \$215,039 (“Loan”) from Plaintiff and executed a note secured by a deed of trust (“DOT”) on the real property located at 2500 East 2nd Street #1911, Reno, Nevada, 89595 (“the Property”). (ECF No. 78-1 at 3-5.)

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¹Defendants MEI-GSR Holdings, LLC (“MEI-GSR”), AM-GSR Holdings, LLC (“AM-GSR”), and Grand Sierra Resort Unit-Owners’ Association (the “HOA”) filed a response. (ECF No. 79.). The Court determines that a reply is unnecessary.

1 Borrowers failed to pay HOA assessments, and the HOA recorded a notice of
2 delinquent assessment lien in July 2012, identifying the amount due to the HOA to date
3 as \$722.31.² (ECF No. 78-3 at 2.) The HOA recorded a notice of default and election to
4 sell on December 27, 2012, identifying the amount due to the HOA to date as \$1,736.46.
5 (ECF No. 78-4.)

6 Plaintiff, acting through its agent (the law firm “Miles Bauer”), requested from Alessi
7 a calculation of the superpriority portion of the HOA’s lien and offered to pay that amount.³
8 (ECF No. 78-5 at 3, 6-7.) Alessi responded with a payment history report, which included
9 a ledger showing all amounts allegedly due. (Id. at 9-12.) The ledger provided by Alessi
10 states that the monthly assessment due on the Property was \$14.41. (Id. at 12; see also
11 ECF No. 78-6 at 8, 78-7 at 7.) Miles Bauer therefore calculated that nine months of
12 assessments on the Property was \$129.69. (ECF No. 78-5 at 15.) Borrowers did not owe
13 any maintenance or nuisance abatement charges from 2007 through the foreclosure sale
14 date. (ECF No. 78-6 at 8-9.) As such, Miles Bauer calculated that the amount owed to
15 pay off the superpriority portion of the HOA’s lien was \$129.69. (ECF No. 78-5 at 15.)
16 Miles Bauer tendered that amount, \$129.69 (“the Check”), to Alessi on May 2, 2013. (Id.
17 at 14-18.) Miles Bauer’s records show the Check was “rejected.” (Id. at 4, 20.)

18 The HOA recorded a notice of foreclosure sale on July 12, 2013. (ECF No. 78-8.)
19 The HOA proceeded with the foreclosure sale on August 15, 2013 (the “HOA Sale”), and
20 MEI-GSR purchased the Property at the HOA Sale for \$4,000. (ECF No. 78-9.) MEI-GSR
21 subsequently transferred whatever interest it had in the Property to AM-GSR. (ECF No.
22 78-10.)

23 ²The notice was recorded by Defendant Alessi & Koenig, LLC (“Alessi”), acting as
24 agent for the HOA. (ECF No. 78-3.)

25 ³Plaintiff offers the affidavit of Adam Kendis (“Kendis Affidavit”), a paralegal with
26 Miles Bauer, who authenticated Miles Bauer’s business records and explained the
27 information contained within Miles Bauer’s records attached to his affidavit. (ECF No. 78-
28 5 at 2-4.)

1 Plaintiff asserts claims for: (1) quiet title/declaratory judgment against all
2 Defendants; (2) breach of NRS § 116.1113 against Alessi and the HOA; (3) wrongful
3 foreclosure against Alessi and the HOA; and (4) injunctive relief against AM-GSR. (ECF
4 No. 1 at 6-13.)

5 **III. LEGAL STANDARD**

6 “The purpose of summary judgment is to avoid unnecessary trials when there is
7 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,
8 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
9 pleadings, the discovery and disclosure materials on file, and any affidavits “show that
10 there is no genuine issue as to any material fact and that the moving party is entitled to a
11 judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue
12 is “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder
13 could find for the nonmoving party and a dispute is “material” if it could affect the outcome
14 of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
15 (1986). Where reasonable minds could differ on the material facts at issue, however,
16 summary judgment is not appropriate. See *id.* at 250-51. “The amount of evidence
17 necessary to raise a genuine issue of material fact is enough ‘to require a jury or judge to
18 resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718
19 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Serv. Co.*, 391 U.S. 253,
20 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and
21 draws all inferences in the light most favorable to the nonmoving party. See *Kaiser*
22 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

23 The moving party bears the burden of showing that there are no genuine issues of
24 material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once
25 the moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting
26 the motion to “set forth specific facts showing that there is a genuine issue for trial.”
27 *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings

1 but must produce specific evidence, through affidavits or admissible discovery material,
2 to show that the dispute exists," Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir.
3 1991), and "must do more than simply show that there is some metaphysical doubt as to
4 the material facts." Orr v. Bank of Am., NT & SA, 285 F.3d 764, 783 (9th Cir. 2002)
5 (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)).
6 "The mere existence of a scintilla of evidence in support of the plaintiff's position will be
7 insufficient." Anderson, 477 U.S. at 252.

8 **IV. DISCUSSION**

9 Plaintiff argues it is entitled to summary judgment on its declaratory relief/quiet title
10 claim because, in pertinent part, Plaintiff tendered the superpriority portion of the HOA's
11 lien when Plaintiff's agent sent the Check to the HOA's agent. (ECF No. 78 at 4-7.) The
12 Court agrees that Plaintiff properly tendered the superpriority amount, and accordingly
13 declines to address the parties' other arguments in Plaintiff's Motion and Defendants'
14 response.

15 In several recent decisions, the Nevada Supreme Court effectively put to rest the
16 issue of tender. For example, in Bank of Am., N.A. v. SFR Invs. Pool 1, LLC, 427 P.3d
17 113 (Nev.), *as amended on denial of reh'g* (Nov. 13, 2018), the Nevada Supreme Court
18 held "[a] valid tender of payment operates to discharge a lien or cure a default." Id. at 117,
19 121. And it reaffirmed that "that the superpriority portion of an HOA lien includes only
20 charges for maintenance and nuisance abatement, and nine months of unpaid
21 assessments." Id. at 117. More recently, the Nevada Supreme Court held that an offer to
22 pay the superpriority amount coupled with a rejection of that offer discharges the
23 superpriority portion of the HOA's lien, even if no money changed hands. See Bank of
24 Am., N.A. v. Thomas Jessup, LLC Series VII, Case No. 73785, --- P.3d ---, 2019 WL
25 1087513, at *1 (Mar. 7, 2019).

26 Here, Plaintiff tendered the superpriority amount. (ECF No. 78-5; see also ECF
27 No. 78-7 at 7 (stating the monthly assessment amount was \$14.41); ECF No. 78-6 at 8-
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1 9 (stating Borrowers did not owe any nuisance or abatement fees.) Thus, the HOA Sale
2 did not extinguish Plaintiff's DOT, even though the HOA rejected Plaintiff's tender. See
3 Bank of America, 427 P.3d at 121-22; see also Thomas Jessup, 2019 WL 1087513, at
4 *4. Further, Defendants do not even respond to Plaintiff's tender argument in response to
5 Plaintiff's Motion. (ECF No. 79.)

6 The Court therefore finds that Plaintiff has demonstrated entitlement to summary
7 judgment on its first claim for relief. In its Complaint, Plaintiff primarily requests a
8 declaration that its DOT survived the HOA Sale. (ECF No. 1 at 13.) Given that Plaintiff
9 has received the relief it requested, the Court dismisses Plaintiff's remaining claims as
10 moot.

11 **V. CONCLUSION**

12 The Court notes that the parties made several arguments and cited to several
13 cases not discussed above. The Court has reviewed these arguments and cases and
14 determines that they do not warrant discussion as they do not affect the outcome of the
15 Motion before the Court.

16 It is therefore ordered that Plaintiff's motion for summary judgment (ECF No. 78)
17 is granted as to Plaintiff's first claim for relief. The Court declares that Plaintiff's DOT
18 survived the HOA Sale and continues to encumber the Property. Plaintiff's remaining
19 claims are dismissed as moot.

20 The Clerk of Court is directed to enter judgment in Plaintiff's favor on its first claim
21 for relief in accordance with this order and close this case.

22 DATED THIS 28th day of March 2019.



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25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
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