

APN# 1319-30-628-017



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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

By Rwanter Deputy Clerk

6 NATIONSTAR MORTGAGE LLC dba MR.
7 COOPER,

Case No. 3:17-cv-00646-MMD-CBC

Plaintiff,

ORDER

8 v.

9 SNOWDOWN HOMEOWNERS
10 ASSOCIATION, CORPORATION,

Defendants.

12 **I. SUMMARY**

13 This dispute arises from the foreclosure sale of property to satisfy a homeowners'
14 association lien. Before the Court is Plaintiff Nationstar Mortgage, LLC's ("Nationstar")
15 motion for summary judgment (ECF No. 28). The Court has reviewed Defendant
16 Snowdown Homeowners Association's ("HOA") response (ECF No. 31) as well as
17 Nationstar's reply (ECF No. 36).

18 Additionally before the Court is the HOA's motion for summary judgment (ECF No.
19 32). The Court has reviewed Nationstar's response (ECF No. 35). No reply was filed.

20 The Court grants Nationstar's motion for summary judgment based on 12 U.S.C. §
21 4617(j)(3) ("Federal Foreclosure Bar") and accordingly denies the HOA's motion for
22 summary judgment as moot.

23 **II. BACKGROUND**

24 The following facts are undisputed unless otherwise indicated.

25 Jefferson Campbell ("Borrower") executed a note ("Note") and first deed of trust
26 ("DOT") that was recorded on June 11, 2004, in exchange for a loan in the amount of
27 \$130,000 ("the Loan") to purchase real property ("Property") located within the HOA at
28 8331 Tramway Drive #6, Stateline, NV 89449. (ECF No. 28 at 4-5.)

1 The Federal National Mortgage Association ("Fannie Mae") purchased the Loan in
2 August 2004 and thereby obtained a property interest in the DOT. (*Id.* at 5.)

3 The beneficial interest in the DOT was assigned to various entities and eventually
4 to Nationstar on July 26, 2012. (*See id.*)

5 The Borrower failed to pay HOA assessments, and the HOA's agent recorded a
6 lien for delinquent assessments, a notice of default and election to sell, and a notice of
7 foreclosure sale. (*Id.* at 7.) The sale ("HOA Sale") took place on February 19, 2013, and
8 the HOA acquired the Property. (*Id.*)

9 Fannie Mae owned the DOT at the time of the HOA Sale, and Nationstar was
10 Fannie Mae's contractually authorized loan servicer. (*Id.* at 5.)

11 III. LEGAL STANDARD

12 "The purpose of summary judgment is to avoid unnecessary trials when there is no
13 dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
14 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,
15 the discovery and disclosure materials on file, and any affidavits "show that there is no
16 genuine issue as to any material fact and that the moving party is entitled to a judgment
17 as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is
18 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could
19 find for the nonmoving party and a dispute is "material" if it could affect the outcome of the
20 suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
21 Where reasonable minds could differ on the material facts at issue, however, summary
22 judgment is not appropriate. *See id.* at 250-51. "The amount of evidence necessary to
23 raise a genuine issue of material fact is enough 'to require a jury or judge to resolve the
24 parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897,
25 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89
26 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all
27 inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v.*
28 *Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

1 The moving party bears the burden of showing that there are no genuine issues of
2 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the
3 moving party satisfies Rule 56's requirements, the burden shifts to the party resisting the
4 motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*,
5 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings but must
6 produce specific evidence, through affidavits or admissible discovery material, to show
7 that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),
8 and "must do more than simply show that there is some metaphysical doubt as to the
9 material facts." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting
10 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere
11 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient."
12 *Anderson*, 477 U.S. at 252.

13 **IV. NATIONSTAR'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 28)**

14 Nationstar argues that the Federal Foreclosure Bar protects Fannie Mae's interest
15 in the DOT. (ECF No. 28 at 9.) The Federal Foreclosure Bar prohibits nonconsensual
16 foreclosure of Federal Housing Finance Agency ("FHFA") assets. *Berezovsky v. Moniz*,
17 869 F.3d 923, 925 (9th Cir. 2017). As a result, the Federal Foreclosure Bar generally
18 protects Fannie Mae's property interests from extinguishment if Fannie Mae was under
19 FHFA's conservatorship, did not consent to such extinguishment, and possessed an
20 enforceable property interest at the time of the HOA Sale. *See id.* at 933.

21 The first two factors are satisfied because the Court grants Nationstar's request for
22 judicial notice (ECF No. 28 at 8) of the following: (1) facts derived from recorded
23 documents; (2) FHFA's statement available on the federal government's website
24 regarding FHFA's policy not to consent to the extinguishment of property of the
25 Enterprises—including Fannie Mae; and (3) the fact that Fannie Mae was placed under
26 FHFA's conservatorship in 2008 per FHFA's website. *See Disabled Rights Action Comm.*
27 *v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (explaining that a court
28 may take judicial notice of a government agency's records and other undisputed matters

1 of public record under Fed. R. Evid. 201); *Eagle SPE NV 1, Inc. v. S. Highlands Dev.*
2 *Corp.*, 36 F. Supp. 3d 981, 986 n.6 (D. Nev. 2014) (taking judicial notice of document on
3 the Federal Deposit Insurance Corporation's website).

4 The third factor—whether Fannie Mae possessed an enforceable property interest
5 at the time of the HOA Sale—is also satisfied because it is undisputed. (See ECF No. 28
6 at 5; see generally ECF No. 31 (failing to dispute this fact).)

7 Thus, the Court finds that the Federal Foreclosure Bar protected Fannie Mae's DOT
8 from extinguishment given that Fannie Mae held an enforceable interest in the Property at
9 the time of the HOA Sale, was under the conservatorship of FHFA at the time of the HOA
10 Sale, and did not consent to the HOA Sale extinguishing or foreclosing Fannie Mae's
11 interest in the Property. Accordingly, the HOA Sale did not extinguish Fannie Mae's
12 interest in the Property, and the DOT therefore continues to encumber the Property.

13 The HOA argues that the FHFA's failure to consent to extinguishment of Fannie
14 Mae's interest, "in conjunction with the lack of due process or procedural safeguards in
15 [the Federal Foreclosure Bar] or in any procedures adopted by [the FHFA]," violated the
16 HOA's procedural due process rights. (ECF No. 31 at 10-11.) To obtain relief on a
17 procedural due process claim, the plaintiff must establish the existence of "(1) a liberty or
18 property interest protected by the Constitution; (2) a deprivation of the interest by the
19 government; [and] (3) lack of process." *Portman v. County of Santa Clara*, 995 F.2d 898,
20 904 (9th Cir. 1993). The HOA contends that it has a protectable property interest in the
21 superpriority portion of its lien and that the Federal Foreclosure Bar deprived the HOA of
22 the ability to foreclose on that lien. (ECF No. 31 at 7-8.) But Nationstar argues that the
23 Federal Foreclosure Bar does not impair the HOA's ability to foreclose on the superpriority
24 portion of its lien. (ECF No. 36 at 2.) The Court agrees with Nationstar. The Federal
25 Foreclosure Bar does not prohibit or delay a homeowners association's foreclosure—it
26 merely preserves the federal property interests following the foreclosure. See *Skylights*
27 *LLC v. Byron*, 112 F. Supp. 3d 1145, 1154 (D. Nev. 2015) ("The HOA's lien, which attached
28 prior to FHFA's placing of Fannie Mae into conservatorship, is not extinguished by section

1 4617(j)(3) and does not lose its priority status, so the HOA is not deprived of its property
2 interest.”). The HOA further argues that the Federal Foreclosure Bar creates an
3 indeterminate delay in the foreclosure process (ECF No. 31 at 9-10), but the Court agrees
4 with Nationstar that the Federal Foreclosure Bar imposes no delay at all (see ECF No. 36
5 at 4). The HOA was free to foreclose on the superpriority portion of its lien once it complied
6 with all state law obligations.

7 Accordingly, the Court grants Nationstar’s motion for summary judgment.

8 **V. CONCLUSION**

9 The Court notes that the parties made several arguments and cited to several cases
10 not discussed above. The Court has reviewed these arguments and cases and determines
11 that they do not warrant discussion as they do not affect the outcome of the motions before
12 the Court.

13 It is therefore ordered that Nationstar’s motion for summary judgment (ECF No.
14 28), seeking judgment in its favor on its quiet title and declaratory relief claims, is granted.
15 The Court declares that the HOA Sale did not extinguish Fannie Mae’s interest in the
16 Property, and the HOA’s interest in the property is subject to the DOT.

17 It is further ordered that the HOA’s motion for summary judgment (ECF No. 32) is
18 denied as moot.

19 It is further ordered that the Clerk of the Court enter judgment in favor of Nationstar
20 and close this case.

21 DATED THIS 5th day of February 2019.

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24 _____
25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
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