IN THE COURT OF APPEALS OF THE STATE OF NEVADA

U.S. BANK NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-OA1,
Appellant,
vs.
5316 CLOVER BLOSSOM CT. TRUST; AND COUNTRY GARDEN OWNERS ASSOCIATION,
Respondents.

No. 75861-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

U.S. Bank National Association appeals from district court orders granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA), Country Garden Owners Association. The HOA recorded a notice of lien for, among other things, unpaid assessments and, later, a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Allegedly, prior to the sale, the servicer for U.S Bank National Association (U.S. Bank) tendered payment to the HOA foreclosure agent for an amount exceeding nine months of past due assessments, but the HOA foreclosure agent rejected the payment. The HOA then proceeded with its foreclosure sale, and 5316 Clover Blossom Ct. Trust (Clover

Blossom) purchased the property and filed the underlying action seeking to quiet title. Before the parties conducted any discovery, Clover Blossom filed a motion for summary judgment, which the district court granted. However, this court vacated the judgment and remanded for further proceedings. *See U.S. Bank, N.A. v. 5316 Clover Blossom Ct. Tr.*, Docket No. 68915-COA (Order Vacating Judgment and Remanding, June 30, 2017).

On remand, U.S. Bank counterclaimed—also seeking to quiet title to the property—and asserted crossclaims against the HOA. Both Clover Blossom and the HOA moved to dismiss U.S. Bank's claims, but the district court construed both motions as motions for summary judgment on grounds that the parties presented matters outside the pleadings. The district court granted summary judgment in favor of Clover Blossom, concluding that U.S. Bank was required to take further actions beyond its attempted tender to satisfy the HOA's superpriority lien. The district court also granted summary judgment in favor of the HOA, concluding that U.S. Bank's crossclaims were time-barred. This appeal followed.

U.S. Bank argues primarily that the district court erred in converting Clover Blossom's motion to dismiss into a motion for summary judgment without first providing notice to U.S. Bank that it was going to do so. U.S. Bank additionally contends that summary judgment in favor of Clover Blossom was inappropriate because U.S. Bank's tender satisfied the superpriority portion of the HOA's lien and rendered the sale void as to that portion of the lien. Finally, U.S. Bank contends that the district court erred in finding that its crossclaims were time-barred.

This court reviews a district court's order granting summary judgment de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all

other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Assuming without deciding that the district court properly converted Clover Blossom's motion to dismiss into a motion for summary judgment, summary judgment was unwarranted because a genuine issue of material fact remained as to whether U.S. Bank's deed of trust survived the foreclosure sale. U.S. Bank alleged and produced evidence showing that it tendered an amount in excess of the superpriority portion of the HOA's lien to the HOA foreclosure agent prior to the sale. Viewing that evidence in the light most favorable to U.S. Bank, the tender would have extinguished the superpriority lien such that the buyer at the foreclosure sale took the property subject to U.S. Bank's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). Moreover, we reject Clover Blossom's arguments on appeal that the tender was impermissibly conditional, that it constituted an assignment of the HOA's superpriority rights to U.S. Bank, and that U.S. Bank was required to take further actions to preserve the tender for it to extinguish the superpriority lien. *See id.* at 607-11, 427 P.3d at 118-21 (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust; that "[t]endering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land;" and rejecting the buyer's

arguments that the bank was required to record its tender or take further actions to keep the tender good). Accordingly, the district court erred in granting summary judgment in favor of Clover Blossom.

We next consider whether the district court properly granted summary judgment in favor of the HOA on U.S. Bank's crossclaims for unjust enrichment, tortious interference with contractual relations, breach of the duty of good faith set forth in NRS 116.1113, and wrongful foreclosure. U.S. Bank argues primarily that the district court misapplied the relevant statutes of limitation because it erroneously concluded that the claims accrued as of the date the foreclosure deed was recorded. U.S. Bank contends that its crossclaims did not accrue until the district court entered a judgment extinguishing its interest in the subject property.

A statute of limitations period runs from the date a cause of action accrues, which is "when a suit may be maintained thereon." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997). Because U.S. Bank knew or should have known as of the time the foreclosure deed was recorded that the HOA either lacked authority to foreclose on the superpriority portion of its lien or, alternatively, that it properly foreclosed and thereby extinguished U.S. Bank's interest, we conclude that the district court correctly determined the date of accrual. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 440 (1998) (noting that a cause of action generally accrues when the wrong occurs or when the wronged party discovers or reasonably should have discovered the facts giving rise to the cause of action). Because U.S. Bank filed its crossclaims against the HOA over four years after the foreclosure deed was recorded, all of those claims were time-barred and thus, the district court properly granted summary judgment on that ground. *See* NRS 11.190(3)(a) (providing that the

limitations period for "[a]n action upon a liability created by statute" is three years);[1] *In re Amerco Derivative Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) (noting that the limitations period for unjust enrichment is four years); *Stalk v. Mushkin*, 125 Nev. 21, 26-27, 199 P.3d 838, 842 (2009) (noting that the limitations period for tortious interference with contractual relations is three years); *see also Clark*, 113 Nev. at 950-51, 944 P.2d at 789 ("Summary judgment is proper when a cause of action is barred by the statute of limitations.").[2]

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[1]We reject U.S. Bank's argument that adjudicating its wrongful foreclosure claim necessarily requires interpreting the CC&Rs and that the limitations period for that claim is therefore the six-year period applicable to actions upon instruments in writing. Although the Supreme Court of Nevada has previously noted that wrongful foreclosure actions can involve interpreting CC&Rs (which are instruments in writing), it also noted that "[a] wrongful foreclosure claim challenges the authority behind the foreclosure, not the foreclosure act itself." *See McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 616, 310 P.3d 555, 559 (2013). Because the authority to foreclose in the manner the HOA did is found in NRS Chapter 116, and because U.S. Bank's wrongful foreclosure claim as pleaded in its counterclaim was not premised upon the CC&Rs, U.S. Bank has not demonstrated that the district court erred in concluding that the wrongful foreclosure claim was subject to the three-year limitations period provided under NRS 11.190(3)(a).

[2]We also reject U.S. Bank's argument that its delay in filing its crossclaims should be excused under the doctrine of equitable tolling. U.S. Bank contends that "false assurances" made by the HOA in the CC&Rs that foreclosure would have no effect on the first deed of trust justified its delay in filing the crossclaims. However, U.S. Bank's own actions in making efforts to satisfy the HOA's superpriority lien prior to the foreclosure sale show that it was aware of the impact that foreclosure might have on its interest in the property and the extent to which any purported superpriority foreclosure might exceed the HOA's authority. Accordingly, U.S. Bank failed to demonstrate that it reasonably waited to file suit. *Cf. City of N.*

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. James Crockett, District Judge
Akerman LLP/Las Vegas
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Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk

Las Vegas v. State, EMRB, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011) ("If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the [period] until the plaintiff can gather what information he needs." (internal quotation marks omitted)).

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.