

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 31 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SELENE FINANCE, LP,

Plaintiff-Appellee,

v.

WESTON HILLS HOMEOWNERS'
ASSOCIATION,

Defendant,

and

SATICOY BAY LLC SERIES 1168
ASPEN CLIFF,

Defendant-Appellant.

No. 19-16277

D.C. No.
2:16-cv-02618-JAD-NJK

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted July 14, 2020**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: IKUTA and HURWITZ, Circuit Judges, and TAGLE, *** District Judge.

In 2008, two individuals purchased a Nevada residence with a loan secured by a deed of trust. Bank of America acquired the deed of trust. After the homeowners failed to pay assessments to the Weston Hills Homeowners' Association ("HOA"), the HOA recorded a Notice of Delinquent Assessment Lien on July 8, 2010 and recorded a Notice of Default and Election to Sell against the property on July 22, 2013. Bank of America's attorneys obtained the HOA account ledger identifying the assessments due and tendered a cashier's check for nine months of HOA dues. The HOA's attorneys accepted the tender. Bank of America later assigned the deed of trust to Selene Finance, LP ("Selene").

The HOA foreclosed and a trustee's deed upon sale to the property was recorded for Saticoy Bay, LLC ("Saticoy Bay"). Selene brought this quiet title action against the HOA and Saticoy Bay alleging the deed of trust still encumbered the property. The district court entered summary judgment for Selene. We have jurisdiction over Saticoy Bay's appeal pursuant to 28 U.S.C. § 1291 and affirm.

1. Selene had standing to bring a quiet title action because it was assigned the deed of trust. *See Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 260 (Nev. 2012). A quiet title action is simply a judicial determination of the claimed interests in real

*** The Honorable Hilda G. Tagle, United States District Judge for the Southern District of Texas, sitting by designation.

property. *See Chapman v. Deutsche Bank Nat'l Tr. Co.*, 302 P.3d 1103, 1106–07 (Nev. 2013) (citing Nev. Rev. Stat. § 40.010). A deed of trust establishes the holder’s interest in the property even if separate from the promissory note. *Edelstein*, 286 P.3d at 259–60; *see also In re Montierth*, 354 P.3d 648, 650–51 (Nev. 2015). The holder of a deed of trust can preserve its interest by tendering the superpriority portion of the HOA’s lien which is made up of nine months of unpaid HOA dues and any unpaid charges for maintenance and nuisance abatement. *See Bank of Am., N.A. v. Arlington W. Twilight Homeowners Ass’n*, 920 F.3d 620, 623 (9th Cir. 2019) (per curiam).

2. Bank of America’s tender satisfied the superpriority portion of the HOA lien and preserved the interest in the property now held by Selene. *See id.* The HOA’s ledger did not list any charges for maintenance or nuisance abatement, so the tender of nine months of HOA dues covered the entire superpriority amount. *See id.*

3. The lack of recording of the tender and Saticoy Bay’s purported bona fide purchaser (“BFP”) status did not alter the legal effect of the tender. *See Bank of Am., N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113, 119, 121 (Nev. 2018) (en banc). “A party’s status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the sale void.” *Id.* at 121. “Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land. Rather, it

preserves a pre-existing interest, which does not require recording.” *Id.* at 119. “A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default.” *Id.* at 121.

AFFIRMED.