

## Scholarly Commons @ UNLV Law

---

Nevada Supreme Court Summaries

Law Journals

---

12-31-2020

### **Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing LLC, 136 Nev. Adv. Op. 85 (Dec. 31, 2020)**

Cristina Phipps

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

---

This Case Summary is brought to you by the Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [david.mcclure@unlv.edu](mailto:david.mcclure@unlv.edu).

*Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing LLC*, 136 Nev. Adv. Op. 85 (Dec. 31, 2020)<sup>1</sup>

PROPERTY LAW: MORTGAGES AND DEEDS OF TRUST, COMMON INTEREST COMMUNITIES, UNIT OWNERS' ASSOCIATION, DUES, ASSESSMENTS, FINES, AND OTHER FEES, LIEN FORECLOSURE; OTHER REMEDIES AND PROCEEDINGS FOR NONPAYMENT

**Summary**

A tender of nine months of past due assessments extinguishes the superpriority portion of an HOA's lien such that an entity takes a property subject to the owner's deed of trust.

**Background**

Owners of the property at issue failed to pay assessments to their homeowners' association (HOA). Under NRS Chapter 116, the HOA recorded a notice of a delinquent assessment lien and then a notice of default and election to sell. Prior to the sale, the predecessor to Respondent Green Tree Servicing LLC—the holder of the first deed of trust on the property—tendered payment to the HOA for nine months of past due assessments. The HOA rejected the tender and continued with the sale, and sold the property to Appellee, Saticoy Bay. Saticoy Bay then sought to quiet title to the property, and Green Tree counterclaimed seeking the same.

**Discussion**

*Conclusive recitals of default in a foreclosure deed do not prevent a valid pre-sale tender from preserving a deed of trust*

The Supreme Court of Nevada affirms the district court's ruling in Green Tree's favor, finding that Green Tree's tender to the HOA extinguished the superpriority portion of the HOA's lien that transferred Saticoy Bay title to the property subject to Green Tree's deed of trust. The tender did not constitute an assignment because "[t]endering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land."<sup>2</sup> And a plain reading of NRS 116.3116 shows that the first deed of trust holder has a legal right to insist on preserving the first deed of trust.<sup>3</sup>

*The valid tender by Green Tree's predecessor preserved the original deed of trust*

No further actions were required to preserve the tender to extinguish the superpriority lien. Thus, the conditions in the letter accompanying the tender were conditions "on which the tendering party ha[d] a right to insist."<sup>4</sup> Not even the subjective good faith of an agent rejecting a valid tender can validate an otherwise void sale. And given that the sale was void as to the superpriority

---

<sup>1</sup> By Cristina Phipps

<sup>2</sup> *Bank of Am., N.A. v. SFR Invs. Pool I, LLC*, 134 Nev. 604, 609 (2018).

<sup>3</sup> *Id.* at 609.

<sup>4</sup> *Id.* at 607.

amount, Saticoy Bay was not a bona fide purchaser and equities do not therefore warrant eliminating the deed of trust.

**Conclusion**

The valid pre-sale tender cured the default as to the superpriority. Portion of the HOA's lien, preserving the original deed of trust by operation of law.