

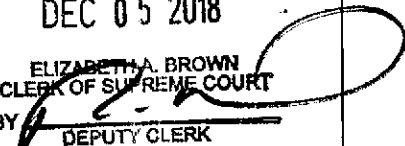
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC,
Appellant,
vs.
VALENCIA MANAGEMENT LLC
SERIES 7, A NEVADA LIMITED
LIABILITY COMPANY,
Respondent.

No. 74170-COA

FILED

DEC 05 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Nationstar Mortgage, LLC, appeals from a district court order granting summary judgment in favor of respondent Valencia Management LLC Series 7 in a quiet title action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien, 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. Counsel on behalf of Nationstar's predecessor-in-interest, BAC Home Loans Servicing, LP, purportedly sought to pay off the past due assessments which constituted the superpriority portion of the delinquent assessment lien. The HOA's agent rejected the offer of payment.

Valencia purchased the subject property at an HOA foreclosure sale. Valencia then filed an action for quiet title, asserting that the foreclosure sale extinguished Nationstar's deed of trust encumbering the subject property. Nationstar filed a motion for summary judgment.

Valencia opposed Nationstar's motion and filed a countermotion for summary judgment. The district court found in favor of Valencia, finding that the prior tender was conditional and thus, Nationstar's interest was eliminated in the HOA foreclosure sale. As such, the district court determined Valencia held quiet title to the subject property free from any encumbrances. This appeal followed.


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

The Nevada Supreme Court recently issued new precedent on the issue of tender in HOA foreclosure procedures. They stated that proper tender of "the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust." *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 116 (2018). More specifically the court held that, "[i]n addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist." *Id.* at ___, 427 P.3d at 118. In considering language nearly identical to the language at issue in the instant matter, the supreme court determined that the tendering party in *Bank of America* had a right to insist on the terms of the letter accompanying its tender of the amount of nine months of back due HOA assessments. *See id.* (stating that a plain reading

of NRS 116.3116 indicates that tender of the superpriority amount, *i.e.*, nine months of back due assessments, 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). As such, the tender, if properly made, would extinguish the superpriority lien here, voiding the foreclosure proceeding. *See id.* at ___, 427 P.3d at 121 (noting that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void). In keeping with that precedent, we must reverse and remand this matter as the district court erroneously determined that the letter accompanying Nationstar's predecessor-in-interest's tender was conditional and therefore the tender was invalid. Because there appears to be a dispute as to whether the tender was actually made, and the record is not illuminating on this point, on remand, the district court shall determine whether the tender was made and, if it was, it shall direct the proceedings in accordance with the supreme court's decision in *Bank of America*.

It is so ORDERED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹In light of our resolution of this matter, we need not address the parties' remaining arguments.

cc: Hon. Michelle Leavitt, District Judge
Akerman LLP/Las Vegas
Clark Newberry Law Firm
Eighth District Court Clerk