

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BOURNE VALLEY COURT TRUST,  
Appellant,  
vs.  
WELLS FARGO BANK, N.A., AS  
TRUSTEE FOR THE HOLDERS OF  
THE SARM 2005-14 TRUST FUND  
WELLS FARGO BANK; RECONTRUST  
COMPANY; AND COUNTRYWIDE  
HOME LOANS, INC.,  
Respondents.

No. 73521-COA

**FILED**

MAR 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bourne Valley Court Trust appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The original owner of the subject property failed to make periodic payments to its 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. Wells Fargo tendered payment to the HOA foreclosure agent for the entire amount listed in the notice of default and election to sell. The HOA foreclosure agent subsequently filed a notice of sale reflecting an unpaid balance. Wells Fargo then submitted a check for an additional \$1400, an amount equal to nine months of past due assessments, but the HOA agent rejected the payment. The HOA later proceeded with its foreclosure sale.

Bourne Valley purchased the subject property from another entity that purchased the property at the HOA foreclosure sale. Bourne Valley then filed an action for quiet title, asserting that the foreclosure sale

extinguished Wells Fargo's deed of trust encumbering the subject property. The parties later filed cross motions for summary judgment and the district court ruled in favor of Wells Fargo, finding that its tender extinguished the HOA's superpriority lien. Thus, the district court held that the subject property was still subject to Wells Fargo's first deed of trust. This appeal followed.

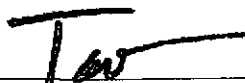
This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving 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.

We determine that the district court rightfully found that Wells Fargo's tender of nine months of past due assessments extinguished the superpriority lien, leaving the buyer at foreclosure to take the property subject to the deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. \_\_\_, \_\_\_, 427 P.3d 113, 116, 118 (2018) (noting 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 deed of trust holder is not required to take any further action to preserve its tender for the tender to effectively eliminate the superpriority lien. *See id.* at \_\_\_, 427 P.3d at 120-21. Further, Bourne Valley's argument that the tender was rightfully


rejected by the HOA's agent lacks any support in the record, and the inferences urged by Bourne Valley do not create a genuine issue of material fact to defeat summary judgment. *See Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (noting that arguments of counsel are not evidence and do not establish the facts of the case); *Wood*, 121 Nev. at 731, 121 P.3d. at 1030-31.

In light of the foregoing, we conclude that no genuine issues of material fact exists to prevent summary judgment in favor of Wells Fargo. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Villani, District Judge  
Law Offices of Michael F. Bohn, Ltd.  
Akerman LLP/Las Vegas  
Eighth District Court Clerk

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<sup>1</sup>Based on our decision set forth above, we do not need to address the commercial reasonableness of the sale or the parties' other arguments.