

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 74807-COA

BANK OF AMERICA, N.A.,
Appellant,
vs.
LAMPLIGHT GARDENS AT
SILVERADO RANCH HOMEOWNERS
ASSOCIATION; AND ALLIED
TRUSTEE SERVICES, INC.,
Respondents.

No. 75114-COA

FILED

MAR 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

River Glider Avenue Trust appeals from a district court order granting summary judgment and Bank of America, N.A., cross-appeals from an order granting a motion to dismiss in the same quiet title action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

The original owner of the subject property failed to make periodic payments to its homeowners' association, cross-respondent Lamplight Gardens at Silverado Ranch Homeowners Association (Lamplight). Lamplight 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. Bank of America tendered payment to the HOA foreclosure agent, cross-respondent Allied Trustee Services, Inc. (Allied), for an amount equal to nine months of past

due assessments, but Allied rejected the payment. Lamplight then proceeded with its foreclosure sale.

River Glider acquired the subject property from a third party that had purchased the property at the HOA foreclosure sale. River Glider then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The parties filed cross motions for summary judgment. The district court ruled in favor of Bank of America, finding that Bank of America's tender extinguished the HOA's superpriority lien. Thus, River Glider took the property subject to Bank of America's first deed of trust. Lamplight and Allied then sought dismissal of Bank of America's cross-claims for wrongful foreclosure and unjust enrichment for mootness. The district court agreed with Lamplight and Allied in determining that Bank of America's restored interest in the property mooted its cross-claims. These consolidated appeals 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.


We determine that the district court rightfully found that Bank of America'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 deeds of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 116 (2018) (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). The conditions that River Glider challenge in the letter accompanying the tender payment are “conditions on which the tendering party has a right to insist.” *Id.* at ___, 427 P.3d at 118. And Bank of America was not required to take any further action to preserve its interest after tender was made. *See id.* at ___, 427 P.3d at 119-20. Additionally, the inferences urged by River Glider to support the HOA agent’s rejection of the proper tender 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. Further, River Glider’s argument that it was a bona fide purchaser, so that the equities warranted eliminating the first deed of trust, does not apply because the tender of the superpriority lien amount rendered any foreclosure on the superpriority amount void. *See Bank of Am.*, 134 Nev. 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); *cf. Shadow Wood Homeowners Ass’n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016) (discussing the balance of equities for a bona fide purchaser in a quiet title action following an HOA foreclosure sale).

In light of the foregoing, we conclude that no genuine issues of material fact exists to prevent summary judgment in favor of Bank of

America. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. As such, we affirm the district court's order and determination that Bank of America's first deed of trust remained on the subject property. Because Bank of America's interest in the property remains, we necessarily affirm the district court's order dismissing Bank of America's claims against Lamplight and Allied based on the summary judgment determination eliminating Bank of America's entitlement to the alternative relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (determining, upon de novo review, dismissal is appropriate where the claimant can prove no set of facts that, if true, would entitle it to relief).

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Stefany Miley, District Judge
Akerman LLP/Las Vegas
Lipson Neilson P.C.
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk