

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NV EAGLES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 75411-COA

FILED

APR 26 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

NV Eagles, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, 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. Respondent Bank of America, N.A., tendered payment to the HOA foreclosure agent for an amount equal to nine months of the HOA assessments. The HOA foreclosure agent rejected the payment and proceeded with its foreclosure sale.

NV Eagles purchased the subject property from another entity that purchased the property at the HOA foreclosure sale. NV Eagles 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 later filed cross motions for summary judgment and the district court ruled in favor of Bank of America, finding that its tender extinguished the HOA's superpriority lien and that the superpriority lien

foreclosure was preempted by the Federal Foreclosure Bar because Bank of America, as beneficiary under the deed of trust, was the servicer on the loan actually held by Fannie Mae. The district court held that the subject property was still subject to Bank of America'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 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 deed of trust. *See Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 116, 118 (2018) (explaining 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. Further, NV Eagles' argument that the tender was rightfully rejected by the HOA's agent lacks any factual support in the record and does

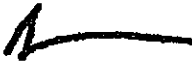
not create a genuine issue of material fact to defeat summary judgment. *See Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (noting that arguments of counsel are not evidence and do not establish the facts of the case); *Wood*, 121 Nev. at 731, 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 Bank of America.¹ *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
The Wright Law Group
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

¹Based on our decision regarding tender in this matter, we do not need to address NV Eagles' challenge to the district court's findings related to the Federal Foreclosure Bar and the commercial reasonableness of the sale.