

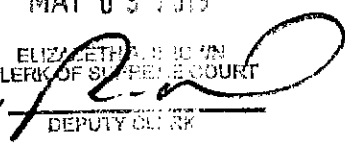
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WELLS FARGO BANK, AS TRUSTEE
FOR THE HOLDERS OF THE
HARBORVIEW 2006-11 TRUST, A
NATIONAL BANKING ENTITY; AND
NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Appellants,
vs.
TRP FUND V, LLC, A DOMESTIC NON-
PROFIT CORPORATION,
Respondent.

No. 74706-COA

FILED

MAY 09 2013

ELIZABETH B. BIRD, CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Wells Fargo Bank appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., 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's predecessor-in-interest tendered payment to the HOA foreclosure agent for an amount equal to nine months of back due assessments. The HOA rejected the payment and proceeded with its foreclosure sale.

Respondent TRP Fund V, LLC, purchased the subject property from the high bidder at the HOA foreclosure sale. TRP 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 TRP, finding that Wells Fargo's tender was conditional and that equity warranted eliminating the first deed of trust. Thus, the district court held that the subject property was no longer 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.

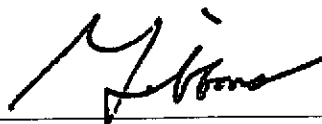
Applying *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 116 (2018), to the instant case, we conclude the district court was incorrect in granting summary judgment to TRP. The finding that TRP was a bona fide purchaser is irrelevant under this decision as proper tender of the superpriority lien amount renders 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).

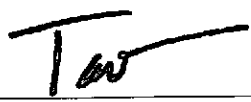
TRP's contention that Wells Fargo's predecessor-in-interest's tender was conditional on a misstatement of law lacks merit. The letter

accompanying the tender did not require the HOA to accept the legal arguments presented, whether mistaken or not. In fact, the letter's condition is nearly identical to the conditional language that the supreme court expressly determined the bank had a right to insist upon in *Bank of America*. See 134 Nev. at ___, 427 P.3d at 118 (quoting the letter to note "acceptance on your part of the facts stated" but not the law). Moreover, the HOA's rejection of the tender was not based upon the assertions within the letter accompanying the tender, but only the amount of the tender as stated in its response to the tender. Thus, the tender of nine months of back due assessments by the first deed of trust holder effectively eliminated the superpriority lien. See *Bank of Am.*, 134 Nev. at ___, 427 P.3d at 117-18.

Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Based on our decision above, we do not need to address the parties' other arguments.

cc: Hon. Joseph Hardy, Jr., District Judge
Akerman LLP/Las Vegas
The Wright Law Group
Hong & Hong
Eighth District Court Clerk