IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICK SALOMON,
Appellant,
vs.
THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2005-50CB MORTGAGE PASS-THROUGH CERTIFICATE SERIES 2005-50CB,
Respondent.

No. 75409-COA

FILED

JUN 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rick Salomon appeals from a district court order granting summary judgment 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 lien for, among other things, unpaid assessments, 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. The servicer for Bank of New York Mellon's (BNYM) predecessor in interest tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, but the HOA agent rejected the payment. The HOA then proceeded with its foreclosure sale.

Salomon later acquired the subject property from the entity that purchased it at the HOA foreclosure sale. Salomon then filed an action

for, among other things, quiet title, asserting that the foreclosure sale extinguished BNYM's deed of trust encumbering the property. The parties subsequently filed cross-motions for summary judgment, and the district court ruled in favor of BNYM, finding that its tender extinguished the superpriority lien and that the property was therefore still subject to BNYM's first deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *See 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 correctly found that the tender of nine months of past due assessments extinguished the superpriority lien, leaving the buyer at the foreclosure to take the property subject to BNYM's deed of trust.[1] *See Bank of Am., N.A. v. SFR Invs. Pool*

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[1]While Salomon disputes BNYM's evidence showing that tender was made, he has not adduced any contrary evidence to establish a genuine issue of material fact as to that issue. *See id.* And although Salomon also seeks reversal on the ground that the tender did not cover certain nuisance abatement charges, the record reflects that those charges were incurred after the tender payment and that the HOA was therefore required to issue new foreclosure notices if it sought superpriority status for those charges.

1, LLC, 134 Nev., Adv. Op. 72, 427 P.3d 113, 116 (2018). Further, the conditions that Salomon challenges in the letter accompanying the tender payment are "conditions on which the tendering party ha[d] a right to insist." *Id.* at 118 (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). And once the tender was made, no further actions were required to preserve the tender for it to eliminate the superpriority lien. *Cf. id.* at 120-21.

Given that the tender of the superpriority lien amount rendered any foreclosure on the superpriority amount void, Salomon's argument that he was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See id.* 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, Inc. 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). Thus, in light of the foregoing, we conclude that no genuine issue of material fact exists to prevent summary

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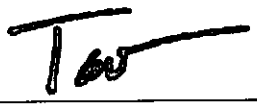
Cf. Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc., 133 Nev. 462, 466-67, 401 P.3d 728, 731-32 (2017) (observing that an HOA must restart the foreclosure process to enforce a second superpriority default).

judgment in favor of BNYM. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk

[2]Given our disposition of this appeal, we need not address the parties' remaining arguments.