IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOREEN PROPERTIES, LLC,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE BEAR STERNS ALT-A TRUST 2006-3, COUNTRYWIDE HOME LOANS, INC.; AND NATIONSTAR MORTGAGE, LLC,
Respondents.

No. 75885-COA

ORDER OF AFFIRMANCE

Doreen Properties, LLC, appeals from a district court order granting summary judgment in a quiet title action.[1] Eighth Judicial District Court, Clark County; Tierra Danielle Jones, 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 and collect on the past due assessments and other fees pursuant to NRS Chapter 116. Counsel on behalf of respondent U.S. Bank, N.A., tendered payment to the HOA foreclosure agent for an amount calculated as nine months of past due assessments plus some amount for collection costs. The HOA foreclosure agent rejected the payment, and the property went to a foreclosure sale.

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this case.

19-25531

Alex Berezovsky purchased the subject property at the HOA foreclosure sale and then quitclaimed his interest in the property to Doreen Properties. U.S. Bank filed an action for quiet title and declaratory relief, asserting that its first deed of trust survived the HOA's foreclosure sale. U.S. Bank subsequently moved for summary judgment. Doreen Properties opposed the motion. The district court ruled in favor of U.S. Bank, finding that U.S. Bank's tender extinguished the HOA's superpriority lien and therefore Doreen Properties took the property subject to U.S. Bank's first deed of trust. This appeal follows.

We review a district court order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when the pleadings and 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 the 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.

Doreen Properties contends U.S. Bank did not satisfy the superpriority lien. However, the district court correctly determined that U.S. Bank timely tendered $1,330.52, an amount which undisputedly exceeded 9 months of assessments.[2] *See Bank of America, N.A. v. SFR*

---

[2]Because no maintenance or nuisance abatement costs had been incurred at the time the tender was made, the tender exceeding 9 months of assessments was sufficient to cure the default as to the superpriority portion of the HOA's lien. If the HOA had subsequently incurred such costs, it would have been required to issue new foreclosure notices if it sought to afford those costs superpriority status. *Cf. Property Plus Invs., LLC v.*

Investments Pool 1, LLC, 134 Nev., Adv. Op. 72, at *4, 427 P.3d 113, 117 (2018) (stating that, as explained in prior decisions, "[a] plain reading of [NRS 116.3116(2) (2012)] indicates that the superpriority portion of an HOA lien includes only charges for maintenance and nuisance abatement, and nine months of unpaid [common expense] assessments"). Therefore, the tender of the defaulted superpriority portion of the HOA's lien cured the default such that the ensuing foreclosure sale did not extinguish the first deed of trust. *See id.* at *5-12, 427 P.3d at 118-21.

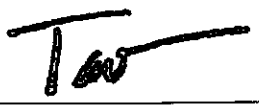
Doreen Properties further contends that U.S. Bank's tender was legally insufficient because it was conditioned on a misstatement of the law. This contention was not properly preserved for appeal because it was not argued in the court below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Moreover, it lacks merit for the following reasons: First, the HOA's rejection of the tender was not based upon the assertions within the letter accompanying the tender, but rather the amount of the tender as stated in its rejection letter. Second, the letter accompanying the tender did not require the HOA to accept the legal arguments presented, whether mistaken or not. And, third, the condition in the letter is nearly identical to the conditional language the Nevada Supreme Court has determined banks have a right to insist upon. *See Bank of America*, 134 Nev., Adv. Op. 72 at *5-6, 427 P.3d at 118 (quoting the letter to note "acceptance on your part of the facts stated" but not the law).

Mortgage Elec. Registration Sys., 133 Nev., Adv. Op. 62, 401 P.3d 728, 731-32 (2017) (observing that a HOA must restart the foreclosure process to enforce a second superpriority default).

For the foregoing reasons, we conclude that no genuine issues of material fact exist to prevent summary judgment in favor of U.S. Bank. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk