

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEVADA NEW BUILDS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

No. 74954-COA

FILED

JUN 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nevada New Builds, LLC, appeals from a district court order granting summary judgment, certified as final under NRCP 54(b), in an interpleader and quiet title action.¹ Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The original owner of the subject property failed to make periodic payments to its homeowners' association (HOA). The HOA Trustee 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 Bank of America, N.A., tendered payment to the HOA Trustee for an amount calculated as nine months of past due assessments. The HOA Trustee accepted the payment and then foreclosed on the property.

Nevada New Builds, LLC, purchased the subject property at the HOA foreclosure sale. The HOA Trustee filed an interpleader action to determine who was entitled to the excess proceeds from the sale, Nevada

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

New Builds filed a quiet title action, and Bank of America moved 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 and therefore Nevada New Builds took the property subject to Bank of America'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.

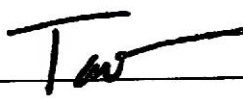
Nevada New Builds contends Bank of America did not satisfy the superpriority lien. However, the district court correctly determined that Bank of America timely tendered \$450, an amount which undisputedly equaled nine months of assessments. *See Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 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 *5-6, 427 P.3d at 118-21.

Nevada New Builds further contends that Bank of America's tender was legally insufficient and rejected because it was conditioned on a misstatement of the law. However, contrary to Nevada New Builds' representation, the record contains evidence demonstrating that the HOA accepted the tender and no evidence that Bank of America placed a condition on the tender.

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

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Alessi & Koenig, LLC
Eighth District Court Clerk