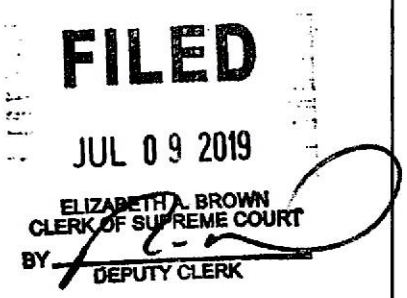
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 8975 SANDY SLATE,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 74015-COA



ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 8975 Sandy Slate appeals from a district court order granting summary judgment, certified as final under NRCP 54(b), in a quiet title action. 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 to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Through its agent, respondent Bank of America, N.A., tendered payment to the HOA foreclosure agent for an amount equal to nine months of back due assessments. The HOA agent rejected the payment because it "[did] not agree with the amount[ ]" of Bank of America's tender. The HOA then proceeded with its foreclosure sale.

Saticoy Bay purchased the property at the foreclosure sale and then filed the instant action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the 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 subject property was therefore 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.

Saticoy Bay contends the district court erred by entering judgment in favor of Bank of America, because the first deed of trust was extinguished by the foreclosure sale, the HOA rightfully rejected the tender, and Bank of America failed to take additional steps beyond the initial tender. We determine the district court correctly found that Bank of America's May 2013 tender of nine months of past due assessments extinguished the superpriority portion of the lien, leaving the buyer at foreclosure to take the property subject to Bank of America's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev., Adv. Op. 72 *4, 427 P.3d 113, 117 (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 and any charges incurred pursuant to NRS 116.310312, is sufficient to satisfy the superpriority lien).[1]

[1]There has been no allegation that the HOA incurred any charges pursuant to NRS 116.310312.

Saticoy Bay argues the HOA had a good-faith basis for rejecting the tender—it believed a larger amount was due. But the HOA's subjective good faith in rejecting the tender is legally irrelevant because the tender cured the default as to the superpriority portion of the HOA's lien by operation of law. *See id.* at *10, 427 P.3d at 120. Because the superpriority portion of the HOA's lien was no longer in default following the tender, the ensuing foreclosure sale was void as to the superpriority portion of the lien, and the HOA's basis for rejecting the tender could not validate an otherwise void sale in that respect.[2] *See id.* at *13, 427 P.3d at 121 ("A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default." (citing 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, Real Estate Finance Law § 7:21 (6th ed. 2014))); *see* Restatement (Third) of Prop.: Mortgages § 6.4(b) & cmt. c (Am. Law Inst. 1997) (stating that a party's reason for rejecting a tender may be relevant insofar as that party may be liable for money damages but that the reason for rejection does not alter the tender's legal effect). And because the foreclosure sale was void as to the superpriority portion of the lien, Saticoy Bay's contention that his status as a bona fide purchaser gives him a superior claim to title also fails. *See Bank of Am.*, 134 Nev., Adv. Op. 72 at *12-13, 427 P.3d at 121.

Saticoy Bay next argues Bank of America's tender was inadequate because it contained impermissible conditions. The Nevada Supreme Court recently held that conditions similar to those accompanying

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[2]Because the voiding of the foreclosure sale as to the superpriority portion of the lien is ultimately the result of the operation of law and not equitable relief, Saticoy Bay's argument that the district court improperly granted Bank of America equitable relief fails.

Bank of America's tender were conditions on which a first deed of trust holder had a right to insist. *See id.* at *5-6, 427 P.3d at 118.

Finally, Saticoy Bay argues Bank of America should have taken further action to protect its interest.[3] However, Bank of America was not required to take any further action for the tender to effectively eliminate the superpriority portion of the lien. *Cf. Bank of Am.*, 134 Nev., Adv. Op. 72 at *8-12, 427 P.3d at 119-21 (declining to require deed of trust holder to take actions beyond those specifically required by NRS Chapter 116 to maintain its interest).

In light of the foregoing, we conclude that no genuine issues of material fact exist to prevent summary judgment in favor of Bank of America.[4] *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

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[3]Saticoy Bay also argues that Bank of America was required to demonstrate that its agent's trust account contained sufficient funds to cover the amount of the tender check. Because that argument is raised for the first time on appeal, we need not consider it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

[4]Based on our decision set forth above, we need not address the parties' other arguments.

cc: Hon. Tierra Danielle Jones, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk