IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICK SALOMON,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 75200-COA

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; Susan Johnson, 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. Respondent Bank of America, N.A., tendered payment to the HOA foreclosure agent for an amount greater than the six months of back due assessments. The HOA rejected the payment without explanation. The HOA then proceeded with its foreclosure sale.

Salomon later acquired the subject property from a third party who purchased it at the HOA foreclosure sale. Salomon then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America'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 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.

We determine the district court correctly found that, prior to the date of the sale, Bank of America tendered a check that exceeded the amount of the past due assessments.[1] Because Bank of America's tender exceeded the amount needed to satisfy the superpriority portion of the lien, it 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 *2, 427 P.3d 113, 116 (2018).

Salomon contends Bank of America's tender was inadequate because it did not satisfy the entire superpriority portion of the lien when it failed to pay a $65 special assessment. Salomon acknowledges the charge was incurred after the tender payment. The HOA was therefore required

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[1]Although Salomon disputes Bank of America'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.*

to issue new foreclosure notices if it sought superpriority status for that charge.[2] *Cf. Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys.*, 133 Nev. 462, 466-67, 401 P.3d 728, 731 (2017) (observing an HOA must restart the foreclosure process to enforce a second superpriority default). Consequently, Bank of America was not obligated to tender payment for it to preserve its interest.

Salomon next contends Bank of America's tender was inadequate because it contained impermissible conditions. The Nevada Supreme Court recently held that the conditions accompanying Bank of America's tender were ones on which a first deed of trust holder had a right to insist. *See Bank of America*, 134 Nev., Adv. Op. 72 at *6, 427 P.3d at 118 (explaining that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount is sufficient to satisfy the superpriority lien and the first deed of trust holder has a legal right to insist on preservation of the first deed of trust). Accordingly, the conditions did not invalidate the tender.

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[2]Even if the $65 had been properly included in the superpriority portion of the lien, Salomon would still not be entitled to relief. The superpriority portion of an HOA lien includes nine months of past due assessments and any charges for maintenance or nuisance abatement pursuant to NRS 116.310312. *Id.* at *4, 427 P.3d at 117. Salomon concedes the past due portion of the assessments was $270, and Bank of America tendered $423. The difference was more than $65, such that the special assessment would have been satisfied had it been part of the superpriority portion of the lien. Moreover, the $65 could not have been part of the superpriority portion of the lien. Salomon claims the $65 was imposed pursuant to NRS 116.310312(2)(b) to abate a nuisance: to turn off smoke alarms that were audible from the common areas. However, to fall within that provision, the nuisance must be "visible" from the common area, NRS 116.310312(2)(b)(1), and sound is not visible.

Salomon next contends 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. *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.[3] *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." (quoting 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, Salomon's contention that his status as a bona fide purchaser gives him a superior claim to title also fails. *See Bank of America*, 134 Nev., Adv. Op. 72 at *12-13, 427 P.3d at 121.

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[3]Salomon also contends that voiding the sale is not the appropriate remedy. He failed to cogently argue this point or present relevant authority, and we thus need not consider his claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Moreover, as explained above, 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.

Finally, Salomon contends Bank of America should have taken further action to protect its interest. However, Bank of America was not required to take any further action for the tender to effectively eliminate the superpriority lien. *Cf. id.* 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

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

[4]Based on our decision set forth above, we need not address the commercial reasonableness of the sale.