

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COLLEGIUM FUND, LLC SERIES 51, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., AS
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING, LP, F/K/A
COUNTRYWIDE HOME LOANS
SERVICING, LP,
Respondent.

No. 75805-COA

FILED

JUL 17 2019

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

ORDER OF AFFIRMANCE

Collegium Fund, LLC Series 51, a Nevada Limited Liability Company, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief 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 America 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.

Collegium later acquired the subject property from the entity that purchased it at the HOA foreclosure sale. Collegium then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the property. The parties

subsequently filed cross-motions for summary judgment, and the district court ruled in favor of Bank of America, finding that its tender extinguished the superpriority portion of the lien and that the 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. *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.

Collegium argues the district court erred by entering judgment in favor of Bank of America because it properly rejected tender, the tender was conditional, and Bank of America did not properly disclose that it had attempted to provide tender. We determine that the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority portion of the lien, leaving the buyer at the foreclosure to take the property subject to Bank of America's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool I, LLC*, 134 Nev., Adv. Op. 72, *2, 427 P.3d 113, 116 (2018).

Initially, Collegium's contention that the HOA rejected the tender in good faith fails. Collegium's subjective good-faith in rejecting the tender is legally irrelevant, as the tender cured the default as to the HOA's superpriority portion of the lien by operation of law. *See id.* at *7, 10, 427 P.3d at 119-120. 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 HOA's basis for rejecting the tender could not validate an otherwise void sale in that respect. *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).


Further, the conditions that Collegium challenges in the letter accompanying the tender payment are "conditions on which the tendering party ha[d] a right to insist." *Bank of Am., N.A.*, at *5-6, 427 P.3d 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 portion of the 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 portion of the lien. *See id.* at *12-13, 427 P.3d at 120-21. Moreover, the changes in priority caused by Bank of America's tender do not require recording. *See id.* at *8-9, 427 P.3d at 119-120.

Given that the tender of the superpriority portion of the lien rendered any foreclosure on the superpriority portion void, Collegium's argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See id.* at *13, 427

P.3d 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, 63-66, 366 P.3d 1105, 1114-16 (2016) (discussing the balance of equities for a bona fide purchaser in a quiet title action following an HOA foreclosure sale). We conclude the district court properly considered the totality of the circumstances in this matter and, in light of the foregoing, we further conclude no genuine issue of material fact exists to prevent summary judgment in favor of Bank of America. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Clark Newberry Law Firm
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹Given our disposition of this appeal, we need not address the parties' remaining arguments.