

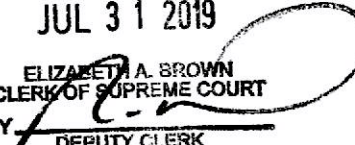
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BROOKLYN HEIGHTS STREET
TRUST,
Appellant,
vs.
JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,
Respondent.

No. 76022-COA

FILED

JUL 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Brooklyn Heights Street Trust appeals from a district court order granting summary judgment in a real property action. Eighth Judicial District Court, Clark County; David M. Jones, 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 JPMorgan Chase Bank's predecessor in interest tendered payment to the HOA foreclosure agent for an amount that exceeded the past due assessments and the HOA accepted the payment. However, the HOA proceeded with its foreclosure sale and the property was purchased by Brooklyn Heights Street Trust.

JPMorgan Chase Bank filed a civil action, asserting that the foreclosure sale did not extinguish its deed of trust encumbering the property. The parties subsequently filed cross-motions for summary judgment, and the district court ruled in favor of JPMorgan Chase Bank,

finding that its tender extinguished the superpriority portion of the lien and the property was therefore still subject to JPMorgan Chase Bank'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.


Brooklyn Heights Street Trust argues the district court erred by entering judgment in favor of JPMorgan Chase Bank because the foreclosure sale extinguished the deed of trust and the bank did not properly disclose that it had tendered the superpriority portion of the lien. We determine that the district court correctly found JPMorgan Chase Bank tendered a check that exceeded the amount of past due assessments. Because JPMorgan Chase Bank'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 the foreclosure sale to take the property subject to JPMorgan Chase Bank'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). 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 JPMorgan Chase Bank'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, Brooklyn Heights Street Trust'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 no genuine issue of material fact exists to prevent summary judgment in favor of JPMorgan Chase Bank. *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. David M. Jones, District Judge
Law Offices of Michael F. Bohn, Ltd.
Smith Larsen & Wixom
Eighth District Court Clerk

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