

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TEAL PETALS ST. TRUST, AN
UNKNOWN ENTITY,
Appellant,

vs.

BANK OF NEW YORK MELLON, F/K/A
BANK OF NEW YORK, AS TRUSTEE,
ON BEHALF OF THE REGISTERED
HOLDERS OF ALTERNATIVE LOAN
TRUST 2005-81, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
2005-81, A/K/A THE BANK OF NEW
YORK MELLON, F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWALT,
INC., ALTERNATIVE PASS-THROUGH
CERTIFICATES, SERIES 2005-81,
Respondent.

No. 75456-COA

FILED

SEP 12 2019

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

ORDER OF AFFIRMANCE

Teal Petals St. Trust appeals from a district court order granting summary judgment, certified as final under NRCPC 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

The original owner of the subject property failed to make periodic payments to her 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. Prior to the sale, the servicer for Bank of New York Mellon (BNYM) 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.

Teal Petals St. Trust (Teal) later acquired the subject property from the entity that purchased it at the HOA foreclosure sale. BNYM then filed an action seeking, among other relief, to quiet title to the property, asserting that its deed of trust survived the foreclosure sale. The parties subsequently filed cross motions for summary judgment, and the district court ruled in favor of BNYM, finding that its tender extinguished the superpriority lien and that the property remained subject to BNYM'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.

Here, the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that the buyer at the foreclosure sale took the property subject to BNYM's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev., Adv. Op. 72, 427 P.3d 113, 116 (2018). We reject Teal's argument that the tender did not extinguish the superpriority lien and instead constituted an

assignment of the HOA's superpriority rights to BNYM. *See id.* at 119 (“Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land.”). Further, the conditions that Teal challenges in the letter accompanying the tender are “conditions on which the tendering party ha[d] a right to insist.” *Id.* 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 lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). And once BNYM tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 119-21 (rejecting the buyer's arguments that the bank was required to record its tender or take further actions to keep the tender good).


Additionally, we reject Teal's argument that BNYM's tender could not have extinguished the superpriority lien because the HOA's foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot resurrect an otherwise void sale. *Cf. id.* at 121 (“[A]fter a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first deed of trust on the property.”). Moreover, given that the sale was void as to the superpriority amount, Teal's argument that its predecessor was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See id.* (noting that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void as a matter of law). Thus, in light of the foregoing, we conclude

that no genuine issue of material fact exists to prevent summary judgment in favor of BNYM. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda M. Bell, Chief Judge
Hon. Joseph T. Bonaventure, Senior Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.