

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS RENTAL & REPAIR LLC
SERIES 53, A NEVADA LIMITED
LIABILITY COMPANY,

Appellant,

vs.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR GSAA
HOME EQUITY TRUST 2006-8 ASSET-
BACKED CERTIFICATES SERIES

2006-8,

Respondent.

No. 75663-COA

FILED

OCT 30 2019

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

ORDER OF AFFIRMANCE

Las Vegas Rental & Repair LLC Series 53 (LVRR) appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA recorded a notice of delinquent 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. Through its counsel, a predecessor-in-interest to respondent Deutsche Bank National Trust Company tendered payment to the HOA's foreclosure agent for an amount equal to nine months of past due assessments, but the agent rejected the payment and the HOA proceeded with its foreclosure sale.

LVRR purchased the property at the HOA's foreclosure sale and commenced the underlying action in which the parties asserted counterclaims seeking, among other things, to quiet title to the property. The parties subsequently filed cross-motions for summary judgment, and

the district court ruled in favor of Deutsche Bank, finding that the tender extinguished the superpriority portion of the HOA's lien and that the property was therefore still subject to Deutsche Bank's 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.

On appeal, LVRR challenges the district court's decision, arguing that the HOA was justified in rejecting the tender because the HOA had a good faith belief that the tender was conditional¹ and that the superpriority portion of its lien included collection fees and costs. But the HOA's subjective good faith in rejecting the tender is legally irrelevant, as the tender cured the default as to the superpriority portion of the HOA's lien by operation of law without the need for any further action by the tendering party. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev.

¹Insofar as LVRR presents its argument with respect to the conditional tender as a separate basis for reversal, we discern no basis for relief. Indeed, the letter accompanying the tender included "conditions on which [Deutsche Bank's predecessor-in-interest] ha[d] a right to insist," as the supreme court recently concluded in considering challenges to a nearly identical letter in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 607, 427 P.3d 113, 118 (2018).

604, 609-11, 427 P.3d 113, 119-21 (2018) (discussing the effect of a valid tender and declining to require the deed of trust holder to take actions beyond those specifically required by NRS Chapter 116 to maintain its interest). Indeed, 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. *Id.* at 612, 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."); see Restatement (Third) of Property: Mortgages § 6.4(b) & cmt. c (Am. Law Inst. 1997) (stating that a party's reasons 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 given that the tender of the superpriority amount rendered any foreclosure on the superpriority portion of the HOA's lien void, LVRR's status as a bona fide purchaser was likewise irrelevant and could not provide a basis for determining that the tender was not effective. See *Bank of Am.*, 134 Nev. at 612, 427 P.3d at 121 (explaining that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void).


Given the foregoing, we conclude that the tender extinguished the superpriority portion of the HOA's lien, such that LVRR took the property subject to Deutsche Bank's deed of trust.² See *id.* at 605, 427 P.3d

²To the extent that LVRR challenges supreme court precedent addressing NRS Chapter 116, its challenge fails as we are bound by those decisions. See *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court").

at 116. And because we therefore conclude that the district court did not err in granting Deutsche Bank's motion for summary judgment, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Clark Newberry Law Firm
Akerman LLP/Las Vegas
Eighth District Court Clerk

³Given our disposition of this appeal, we need not address the parties' remaining arguments.