IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-18CB, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2005-18CB, A FOREIGN CORPORATION; AND THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS OF THE CWHEQ, INC., CWHEQ REVOLVING HOME EQUITY LOAN TRUST SERIES 2005-B, A FOREIGN CORPORATION,
Appellants,
vs.
RJRN HOLDINGS, LLC,
Respondent.

No. 75661-COA

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2005-18CB, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2005-18CB; AND THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS OF THE CWHEQ, INC., CWHEQ REVOLVING HOME EQUITY LOAN TRUST SERIES

No. 76306-COA

19-48522

2005-B,
Appellants,
vs.
RJRN HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

ORDER OF REVERSAL AND REMAND

The Bank of New York Mellon appeals from district court orders granting summary judgment (certified as final under NRCP 54(b)) and awarding attorney fees and costs in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The original owner of the subject property failed to make periodic payments to her 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. Prior to the sale, the servicer for the predecessor in interest to The Bank of New York Mellon (BNYM)—holder of both the first and second deeds of trust on the property—tendered payment to the HOA foreclosure agent for nine months of past due assessments, but the agent nevertheless proceeded with its foreclosure sale, at which RJRN Holdings, LLC (RJRN), purchased the property.[1] Ultimately, BNYM and RJRN filed counterclaims seeking to quiet title to the property. Both parties moved for summary judgment, and the district

[1]To the extent RJRN challenges whether the tender was actually delivered, it did not contest delivery below and has therefore waived that argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

court ruled in favor of RJRN, finding that it was a bona fide purchaser (BFP) that took title to the property without notice of the tender. The district court also refused to set aside the sale on grounds of fraud, unfairness, or oppression, and it later awarded attorney fees and costs to RJRN under NRCP 68. These appeals followed.

On appeal, BNYM argues that the district court erred by concluding that BNYM failed to take proper measures to protect its interests in the property and that RJRN was therefore a BFP that took title free and clear of those interests. We agree.

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.

As our supreme court has held, the tender of nine months of past due assessments extinguishes an HOA's superpriority lien such that the buyer at a foreclosure sale takes the property subject to prior deeds of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). In this case, once the servicer for BNYM's predecessor tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 609-11, 427 P.3d 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). Moreover,

because the sale was void as to the superpriority amount of the HOA's lien, RJRN's argument that it was a BFP and that the equities therefore warranted eliminating the deeds of trust is unavailing. *See id.* at 612, 427 P.3d at 121 (noting that a party's BFP status is irrelevant when a defect in the foreclosure renders the sale void as a matter of law).

RJRN also argues that the tender in this case was impermissibly conditional, but the conditions in the letter accompanying the tender were "conditions on which the tendering party ha[d] a right to insist." *Id.* at 607, 427 P.3d at 118 (stating 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). Additionally, we reject RJRN's argument that the 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 validate an otherwise void sale. *See id.* at 612, 427 P.3d at 121 (explaining that "[a] foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default"); *see also* 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).

In light of the foregoing, we conclude that the tender extinguished the HOA's superpriority lien such that RJRN took the property subject to BNYM's deeds of trust. *See Bank of Am.*, 134 Nev. at 605, 427 P.3d at 116. And because we therefore conclude that the district

court erred in granting RJRN's motion for summary judgment and denying BNYM's motion for the same, we reverse and remand this matter to the district court for entry of judgment in favor of BNYM. *See SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 135 Nev., Adv. Op. 45, 449 P.3d 461, 466 (2019) (reversing an order granting one party summary judgment and directing entry of judgment on the opposing party's countermotion for summary judgment); *SFR Invs. Pool 1, LLC v. First Horizon Home Loans*, 134 Nev. 19, 25, 409 P.3d 891, 895 (2018) (doing the same). Because we reverse the judgment in RJRN's favor, we also necessarily reverse the district court's order awarding attorney fees and costs to RJRN. *See Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 579-80, 427 P.3d 104, 112 (2018) (concluding an award of attorney fees and costs must necessarily be reversed when the underlying decision upon which the award was based is reversed).

It is so ORDERED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[2]Insofar 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.

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