

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAISY TRUST; AND RESOURCES
GROUP, LLC, AS TRUSTEE FOR
DAISY TRUST,

Appellants,

vs.

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBOR VIEW
MORTGAGE LOAN TRUST 2006-1
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-1,

Respondent.

No. 76564-COA

FILED

NOV 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Daisy Trust and Resources Group, LLC (collectively referred to as Daisy), appeal from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Joanna Kishner, 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 predecessor in interest to U.S. Bank National Association (U.S. Bank)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which Daisy purchased the property.

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Ultimately, U.S. Bank and Daisy filed counterclaims seeking to quiet title to the property. Both parties moved for summary judgment, and the district court ruled in favor of U.S. Bank, finding that the tender extinguished the superpriority portion of the HOA's lien such that Daisy took title to the property subject to U.S. 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.

Here, the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that Daisy took the property subject to U.S. Bank's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Daisy's argument that the tender did not extinguish the superpriority lien and instead constituted an assignment of the HOA's superpriority rights to U.S. Bank's predecessor. *See id.* at 609, 427 P.3d 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 Daisy challenges in the letter accompanying the tender are "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, *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 U.S. Bank'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).


Additionally, we reject Daisy'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 ("[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."); 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). Moreover, given that the sale was void as to the superpriority amount, Daisy's argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See Bank of Am.*, 134 Nev. at 612, 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 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 U.S. Bank. *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. Joanna Kishner, District Judge
Law Offices of Michael F. Bohn, Ltd.
Christopher A. Swift
Wright, Finlay & Zak, 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.