IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRONE & IN-CHING, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION,
Respondent.

No. 76515-COA

ORDER OF AFFIRMANCE

Tyrone & In-Ching, LLC (Tyrone), appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

The original owner of the subject property failed to make periodic payments to his 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, respondent Bank of America, N.A. (BOA)—the holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, which the agent rejected. The HOA then proceeded with its foreclosure sale. Appellant Tyrone later acquired the property from the purchaser at the foreclosure sale and filed the underlying action against BOA seeking to quiet title to the property, and BOA counterclaimed seeking the same. BOA ultimately moved for summary judgment, which the district court granted, finding that the tender

extinguished the superpriority portion of the HOA's lien and that the property remained subject to BOA'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, Tyrone argues primarily that NRS 116.1114—which states that the remedies provided for in NRS Chapter 116 "must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed"—requires that a tender must include an HOA's reasonable costs for enforcing its lien in order for the tender to preserve a first deed of trust. But Nevada law is clear that a tender need only satisfy the amount of the HOA's superpriority lien—which does not include enforcement costs—in order to preserve the first 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) (holding that an "unconditional tender of the superpriority amount" of the HOA's lien "results in the buyer at foreclosure taking the property subject to the deed of trust"); *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016) (concluding that "the superpriority lien granted by [the relevant version of] NRS 116.3116(2) does not include an amount for collection fees

and foreclosure costs incurred" and is instead limited to nine months of past due assessments).

Moreover, to the extent Tyrone challenges the tender on grounds that it was impermissibly conditional, the conditions in the tender letter here were virtually identical to those in the letter at issue in *Bank of Am.*, which the supreme court held were permissible because they were "conditions on which the tendering party ha[d] a right to insist." 134 Nev. at 607, 427 P.3d at 118. We further reject Tyrone'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 Prop.: Mortgs. § 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).

Finally, given that the underlying sale was void as to the superpriority amount of the HOA's lien, Tyrone'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, we conclude that no genuine issue of material fact exists to prevent

summary judgment in favor of BOA. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.[1]

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[1]We decline to consider Tyrone's arguments raised for the first time in its reply brief that the district court improperly considered hearsay evidence and that BOA's tender failed to include a reserve amount for continuing nuisance and abatement charges. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 523 n.13, 286 P.3d 249, 261 n.13 (2012) (noting that appellate courts need not consider issues raised for the first time in a reply brief).

[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.