IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLISTON INVESTMENT GROUP, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 75658-COA

ORDER AFFIRMING IN PART AND REVERSING IN PART

Williston Investment Group, LLC (Williston), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA's foreclosure agent 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 respondent Nationstar Mortgage, LLC (Nationstar)—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 accepted. The HOA then proceeded with its foreclosure sale, at which appellant Williston purchased the property. Williston filed the underlying action against Nationstar seeking to quiet title to the property, and Nationstar counterclaimed seeking the same. The parties ultimately filed dueling motions for

summary judgment, and the district court ruled in favor of Nationstar, concluding that the foreclosure sale was void because the HOA's foreclosure agent failed to mail the various foreclosure notices to the original owner at his current address as required by statute. On that ground, the district court quieted title in favor of the original owner. Alternatively, the district court found that Nationstar's predecessor's tender extinguished the superpriority portion of the HOA's lien and that the property remained subject to Nationstar'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, Williston contends that the district court erred in concluding that the sale was void because both the original owner of the property and Nationstar had actual notice of the sale and therefore suffered no prejudice. The record reflects that the HOA's foreclosure agent knew where the original owner—who was serving overseas on active duty—lived and yet failed to mail the statutory foreclosure notices to his overseas address. *See* NRS 116.31162(1)(a), (3)(b)[1] (requiring that the HOA mail the notice of delinquent assessments and notice of default to the unit and the

[1]We herein cite the versions of the relevant statutes in effect at the time the underlying causes of action arose.

unit's owner "at his or her address, if known"); NRS 116.311635(1)(a)(1) (requiring the same for the notice of sale). But the record does not reveal whether the original owner received actual notice of the sale. Nevertheless, we agree with Williston that the district court erred.

The district court relied on the Nevada Supreme Court's holding in *Title Insurance & Trust Co. v. Chicago Title Insurance Co.*, 97 Nev. 523, 634 P.2d 1216 (1981), to conclude that the notice defect rendered the entire sale void. However, as the supreme court recently clarified, more recent cases have set forth a "notice/prejudice rule" whereby defective notice results in a void sale only if the intended recipient did not receive actual pre-sale notice and was prejudiced by the defect. *U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev., Adv. Op. 26, 444 P.3d 442, 447 (2019) (distinguishing *Title Ins. & Tr.*); *see W. Sunset 2050 Tr. v. Nationstar Mortg., LLC*, 134 Nev. 352, 354-55, 420 P.3d 1032, 1035 (2018) (recognizing that failure to strictly comply with NRS Chapter 116 notice requirements is excused when it does not result in prejudice). Here, it appears that the original owner—who was named as a party below but did not participate in the action and had a default entered against him—might not have received actual notice. But there is no evidence that either the original owner or Nationstar were in any way prejudiced by the notice defect (i.e., there is no evidence that the original owner would have acted to cure the default if he received notice, and it is undisputed that Nationstar's predecessor received adequate notice). Accordingly, we must reverse the district court's decision

quieting title in the original owner and concluding that the sale was void in its entirety as a result of defective notice.[2]

This conclusion does not end our analysis, however, as we must now determine whether the district court properly concluded that Nationstar's deed of trust survived the sale even if the sale was not void. Williston argues that the tender in this case did not satisfy the HOA's superpriority lien because it did not include a "reserve" for later maintenance and nuisance-abatement charges. Initially, we note that Williston failed to raise this specific issue below and instead argued broadly that Nationstar failed to produce evidence showing that the HOA's superpriority lien did not include maintenance and nuisance-abatement charges. *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."). But even if Williston had raised the issue, it provides no authority on appeal to support the notion that an HOA's superpriority lien includes maintenance and nuisance-abatement charges incurred after a valid tender has already discharged the lien and before the HOA has asserted another lien. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38

---

[2]Similarly, to the extent the district court's ruling could be construed as setting the sale aside on equitable grounds, such action was also unwarranted. No evidence in the record shows that the failure to mail the notices to the original owner in any way brought about the low price at the foreclosure sale. *See Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 748, 405 P.3d 641, 647 (2017) (noting that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale absent additional proof of some element of fraud, unfairness, or oppression *as accounts for and brings about* the inadequacy of price" (emphasis added) (internal quotation marks omitted)).

(2006) (noting that the appellate courts need not consider arguments not cogently stated or supported by relevant authority); *cf. Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 467, 401 P.3d 728, 731-32 (2017) (observing that, "when an HOA rescinds a superpriority lien on a property, [it] may subsequently assert a separate superpriority lien on the same property based on monthly HOA dues, and any maintenance and nuisance abatement charges, accruing *after* the rescission of the previous superpriority lien" (emphasis added)).

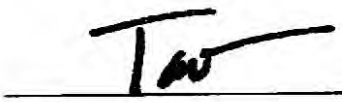
Moreover, Williston fails to show that the charges even reflected maintenance or nuisance-abatement costs incurred by the HOA as opposed to mere fines for violations. *See* NRS 116.310312(2)(a)-(b) (setting forth the maintenance and nuisance-abatement actions an HOA may undertake); NRS 116.3116(2) (granting superpriority to the portion of the HOA's lien comprised of "any charges *incurred by the association* on a unit pursuant to NRS 116.310312" (emphasis added)). Accordingly, Williston's argument is without merit, and the tender of nine months of past due assessments was sufficient to preserve Nationstar's deed of trust under the circumstances of this case. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). And because the underlying sale was therefore void as to the superpriority portion of the HOA's lien, Williston's argument that it took title free and clear of Nationstar's interest because it was a bona fide purchaser is unavailing. *See id.* 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 relevant part of the sale void as a matter of law).

Based on the foregoing, we reverse the district court's order insofar as it quieted title in the original owner and concluded that the

underlying foreclosure sale was void in its entirety. But we affirm the district court's summary judgment preserving Nationstar's interest in the property on grounds that the sale was void as to the superpriority portion of the HOA's lien.

It is so ORDERED.[3]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Kerry Louise Earley, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk

[3]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.