

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 76323-COA

FILED

DEC 27 2019

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

ORDER OF REVERSAL AND REMAND

Bank of America, N.A. (BOA), appeals from a district court order granting summary judgment in an interpleader and quiet title action. Eighth Judicial District Court, Clark County; Joanna Kishner, 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 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, BOA—then 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, at which respondent SFR Investments Pool 1, LLC (SFR), purchased the property.

The HOA foreclosure agent later initiated the underlying action by filing a complaint in interpleader to determine the priority of each of the property's lienholders for purposes of distributing the excess proceeds from the foreclosure sale. After BOA filed an answer to the complaint, it

stipulated with the HOA foreclosure agent and SFR to join SFR as a necessary party and allow BOA to amend its answer to assert claims against SFR. The district court adopted the parties' stipulation in an order, and BOA then filed its amended answer in which it also asserted claims for quiet title and declaratory relief against SFR, seeking a ruling that the deed of trust survived the foreclosure sale. SFR counterclaimed seeking a ruling that the HOA foreclosed on its superpriority lien and thereby extinguished the deed of trust. Ultimately, the parties filed competing motions for summary judgment, and the district court ruled in favor of SFR, concluding that BOA lacked standing to maintain its claims because it had assigned the deed of trust to another entity. Further, the district court granted SFR's motion for summary judgment as unopposed, reasoning that BOA did not have standing to oppose the motion. Finally, it concluded that even if BOA had standing, summary judgment in favor of SFR was still warranted because BOA "failed to meet its burden to demonstrate an evidentiary basis" to defeat summary judgment. 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, BOA argues that the district court erred in concluding that BOA lacked standing to maintain its claims because NRCP

25¹ expressly permits an original party to maintain an action following a transfer of interest. BOA also contends that this court should direct the district court to enter judgment in BOA's favor on grounds that its tender preserved the deed of trust. SFR counters that BOA lacked standing to bring its claims in the first instance because it had already assigned the deed of trust at the time it filed the claims. SFR concedes that summary judgment in its favor was not warranted and argues that the district court should have instead dismissed the case for lack of standing or on grounds of mootness. We conclude that BOA was entitled to maintain the action below and that it is entitled to judgment as a matter of law.

NRCP 25 governs the substitution of parties. It provides that, “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.” NRCP 25(c); see *Triple Quest, Inc. v. Cleveland Gear Co.*, 627 N.W.2d 379, 383 (N.D. 2001) (“The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named.” (quoting 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure: Civil 2d* § 1958)).


¹The Nevada Rules of Civil Procedure were amended effective March 1, 2019. See *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). We cite the prior version of the applicable rules, as they were in effect at all relevant times herein.


Although BOA transferred its interest before it filed its claims against SFR, it is undisputed that it was the record holder of the first deed of trust at the time the underlying action was initiated by the filing of the complaint in interpleader. See NRCP 3 (“A civil action is commenced by filing a complaint with the court.”). SFR essentially contends that the claims BOA filed against it constituted a separate action that BOA did not have standing to bring. However, our supreme court has recognized that, “[u]nlike a claim, an action includes the original claim and any crossclaims, counterclaims, and third-party claims.” *United Ass’n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 820, 783 P.2d 955, 957 (1989). Accordingly, BOA’s claims were merely some of the multiple claims falling under the umbrella of the original interpleader action. Because NRCP 25(c) expressly provides that “the action may be continued by” a predecessor in interest, and because BOA’s claims against SFR constituted continuance of the original action (in which SFR does not dispute that BOA’s participation was appropriate), the district court erred in determining that BOA lacked standing to maintain its claims.

Turning to the tender issue, we note that the district court did not address the effect of BOA’s tender in its order, even though BOA had fully briefed the issue, and even though the district court ruled on the merits of the underlying claims in spite of its conclusion that BOA lacked standing. SFR does not set forth any argument on this issue in its briefing on appeal, see *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating respondents’ failure to respond to one of the appellants’ arguments as a confession of error), and our de novo review of the record shows that the tender at issue here was in all relevant respects identical to the one discussed in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134

Nev. 604, 427 P.3d 113 (2018). As the supreme court did in that case, we conclude that BOA's tender of nine months of past due assessments was sufficient to preserve the deed of trust such that SFR took title subject to it. *See id.* at 605, 427 P.3d at 116. Accordingly, we reverse and remand this matter to the district court for entry of judgment in favor of BOA. *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 counter-motion 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).

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
Akerman LLP/Las Vegas
Kim Gilbert Ebron
Eighth District Court Clerk

²Insofar 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.