IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RJRN HOLDINGS, LLC,
Appellant,
vs.
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 HOLDERS OF SAMI II TRUST 2006-AR7, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR7; AND NATIONSTAR MORTGAGE, LLC,
Respondents.

No. 76883-COA

ORDER OF AFFIRMANCE

RJRN Holdings, LLC (RJRN), appeals from a district court order granting a motion for summary judgment, certified as final under NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, 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 former servicer of the loan secured by the deed of trust at issue in this case[1] tendered payment to

[1]The record is not clear as to whether The Bank of New York Mellon (BNYM) or Nationstar Mortgage, LLC, is the current beneficiary of the first deed of trust. Regardless, RJRN has not challenged the extent to which

the HOA foreclosure agent for nine months of past due assessments, which the agent rejected. The HOA proceeded with its foreclosure sale, and RJRN later acquired the property from the purchaser at the sale. RJRN then filed the underlying action seeking to quiet title to the property, and BNYM counterclaimed seeking the same. Both RJRN and BNYM moved for summary judgment, and the district court initially denied the motions. However, BNYM moved for reconsideration on grounds that the district court misapprehended the law of tender, and the district court agreed; it granted summary judgment in favor of BNYM on grounds that the tender preserved the deed of trust and that RJRN acquired the property subject to it. 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 HOA's superpriority lien such that RJRN took the property subject to BNYM's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d

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either respondent is a proper party to this case, and this issue is irrelevant to our disposition. Accordingly, we need not consider it, and we herein refer to both respondents collectively as BNYM.

113, 116 (2018). The conditions that RJRN 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 the prior servicer 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).

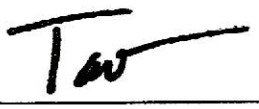
Additionally, we reject RJRN's argument that the tender could not have extinguished the superpriority lien because the HOA foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot validate an otherwise void sale. *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.: Mortgages § 6.4(b) & cmt. c (Am. Law Inst. 1997) (indicating 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, RJRN'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 BNYM. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.[2]

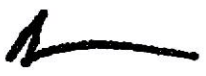
Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



_____, J.
Tao



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[2]We reject RJRN's argument that the district court abused its discretion in granting reconsideration because of an unpublished order from the Supreme Court of Nevada. In light of *Bank of America*, which employed the same reasoning as the unpublished order on which the district court relied, the district court's original decision was clearly erroneous and reconsideration was warranted. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider a previously decided issue if . . . the decision is clearly erroneous."). Moreover, the district court was entitled to rely on the unpublished order for its persuasive value. *See* NRAP 36(c)(3) (providing that parties may cite unpublished dispositions issued by the supreme court on or after January 1, 2016, for their persuasive value).

[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.

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