

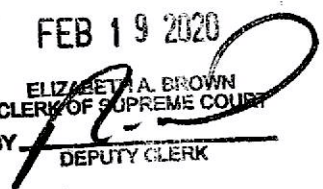
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SWEET CEDAR PARTNERS, LLC,
Appellant,
vs.
U.S. BANK TRUST, N.A., AS TRUSTEE
FOR THE LSF9 MASTER
PARTICIPATION TRUST,
Respondent.

No. 76076-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Sweet Cedar Partners, LLC (Sweet Cedar), 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; Tierra Danielle Jones, 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, a predecessor in interest to respondent U.S. Bank Trust, N.A. (U.S. Bank)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent to cover nine months of past due assessments, which the agent rejected. The HOA proceeded with its foreclosure sale where Sweet Cedar purchased the property. Sweet Cedar then filed the underlying action, seeking to quiet title to the subject property. After acquiring the first deed of trust on the

property during the ensuing litigation, U.S. Bank substituted into the action and asserted counterclaims for quiet title and declaratory relief. The parties ultimately filed competing motions for summary judgment, and the district court ruled in U.S. Bank's favor, finding that the tender extinguished the HOA's superpriority lien and that the property remained subject to the first 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 Sweet Cedar took the property subject to the 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 Sweet Cedar'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 in interest. *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 Sweet Cedar challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d]


a right to insist.” *Id.* at 607-08, 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 further reasoning that 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 in interest 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 Sweet Cedar’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). Moreover, given that the sale was void as to the superpriority amount, Sweet Cedar’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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Noggle Law PLLC
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.