IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRS SVC AS TRUSTEE FOR 322 EVAN PICONE TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO BANK OF AMERICA HOME LOANS SERVICING LP, F/K/A COUNTRYWIDE HOME LOANS SERVICING LP,
Respondent.

No. 77820-COA

FILED

FEB 27 2020

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

ORDER OF AFFIRMANCE

TRS SVC (TRS) appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, 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, respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for nine months of past due assessments, calculated based upon a statement of account reflecting the amount of the HOA's annual assessment. The agent rejected the tender and proceeded with the foreclosure sale, selling the property to 322 Evan Picone Trust, for which appellant TRS is the trustee. Ultimately, TRS and BOA countersued to quiet title to the property. Both parties moved for summary judgment, and the district court ruled in BOA's favor, finding that

the tender extinguished the superpriority portion of the HOA's lien such that TRS took title to the property 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, TRS primarily contends that BOA and the district court improperly calculated the superpriority portion of the HOA's lien. Specifically, TRS notes that NRS 116.3116(2)(c) (2012) grants superpriority to the HOA's lien to the extent of common expenses "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." Because the HOA in this case levied assessments annually rather than monthly, TRS contends that the entire annual assessment came due in the relevant 9-month period and that it was therefore that amount—not a prorated 9-month amount—that was entitled to superpriority. Accordingly, TRS contends that BOA's tender failed to satisfy the full superpriority portion of the HOA's lien.

As the supreme court did in a prior unpublished order addressing this same issue, we reject TRS' argument on this point. *See Sage Realty LLC Series 2 v. Bank of N.Y. Mellon*, Docket No. 73735 (Order of Affirmance, December 11, 2018); *see also* NRAP 36(c)(3) (providing that

unpublished orders of the supreme court issued after 2015 are citable for their persuasive value). In that case, the supreme court reasoned that "[b]y imposing annual instead of monthly assessments, the HOA in essence accelerated the[ir] due date." *Sage Realty*, Docket No. 73735. Applying that rationale here, only 9 months' worth of the HOA's annual assessment was entitled to superpriority, and the district court correctly found that the tender of that amount extinguished the superpriority lien such that TRS took the property subject to BOA's deed of trust.[1] *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018).

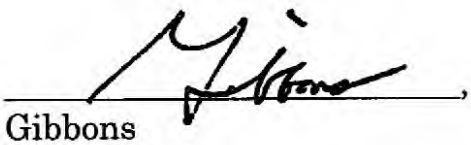
Additionally, we reject TRS' argument that BOA was required to take further actions to protect its interest because, once BOA tendered, no such actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 609-11, 427 P.3d at 119-21 (rejecting the buyer's arguments that the bank was required to record its tender or take further actions to keep the tender good). Moreover, given that the sale was void as to the superpriority amount, TRS' argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust 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 sale void as a matter of law). Thus, in light of the foregoing, we

[1]Even if we agreed with TRS that a full annual assessment coming due in the relevant 9-month period would be entitled to superpriority status, it is at least arguable that, on the facts of this case, no portion of the HOA's lien would have had superpriority. As TRS concedes, the action to enforce the HOA's lien was instituted on October 6, 2011, meaning that the HOA's yearly assessment—which came due on January 1, 2011—did not actually fall within the relevant 9-month period.

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.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk