

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZIXIAO CHEN,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 76886-COA

FILED

APR 13 2020

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

ORDER OF AFFIRMANCE

Zixiao Chen appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, 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, the predecessor to respondent Nationstar Mortgage, LLC (Nationstar)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount exceeding nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which Chen's predecessor purchased the property. Chen later acquired the property and filed the underlying action seeking to quiet title against Nationstar, which counterclaimed seeking the same. The parties filed competing motions for summary judgment, and the district court ruled in

Nationstar's favor, finding that Nationstar's predecessor tendered an amount in excess of the superpriority portion of the HOA's lien, but ruling instead that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the foreclosure sale from extinguishing Nationstar's deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *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.

In its written order, the district court concluded that no genuine dispute of material fact remained regarding the application of the Federal Foreclosure Bar because Nationstar presented sufficient evidence to prove that the underlying loan was owned by the Federal National Mortgage Association (Fannie Mae) at the time of the foreclosure sale. However, the district court erred in ruling on this ground because Fannie Mae recorded an assignment of the deed of trust prior to the foreclosure sale purporting to convey both the deed of trust and the promissory note to Nationstar's predecessor, thereby creating a genuine dispute of material fact as to whether Fannie Mae owned the loan at the time of the sale such that the Federal Foreclosure Bar would apply. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d

363, 367-68 (2018) (holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent).


Nevertheless, the district court found that Nationstar's predecessor tendered an amount in excess of the superpriority lien to the HOA foreclosure agent, and Chen does not challenge that determination on appeal, nor does she attempt in her reply brief to counter Nationstar's argument that the tender presents an alternative ground for affirmance. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised in an appellant's opening brief are deemed waived); *Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge cannot be regarded as unwitting and in our view constitutes a clear concession by appellants that there is merit in respondents' position"). Accordingly, we conclude that the tender here extinguished the HOA's superpriority lien such that Chen took the property subject to Nationstar's 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); *see also Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (noting that the appellate courts will affirm a district court where it reaches the correct result, even if for the wrong reason). Moreover, given that the sale was void as to the superpriority amount, Chen's argument that she 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).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
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.