IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LA JOLLA DEVELOPMENT GROUP LLC, A NEVADA LIMITED LIABILITY COMPANY, Appellant, vs. BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION, Respondent.	No. 75870-COA **FILED** APR 17 2020 ELIZABETH A. BROWN CLERK OF SUPREME COURT BY S. Young DEPUTY CLERK

ORDER OF AFFIRMANCE

La Jolla Development Group LLC (La Jolla) appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Valerie Adair, 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, 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, but the agent rejected the tender and proceeded with its foreclosure sale, at which La Jolla's predecessor purchased the property. Ultimately, La Jolla acquired the property and filed the underlying action to quiet title against BOA. The 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 La Jolla's predecessor took title to the property subject to BOA's deed of trust. This appeal followed.

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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.

Here, the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that La Jolla 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). The conditions that La Jolla challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d] a right to

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[1]We reject La Jolla's argument that BOA was also required to tender the HOA's collection fees and costs. *See Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016) (interpreting the pre-2015 version of NRS 116.3116(2) and concluding that an HOA's superpriority lien "does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure"). Further, we decline to consider La Jolla's argument that BOA failed to prove that the amount it tendered constituted nine months of assessments, as La Jolla did not dispute that below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

insist."[2] *Id.* at 606-07, 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 BOA 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 La Jolla'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 Property: Mortgs. § 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

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[2]We also reject La Jolla's argument that the tender letter required the HOA to waive its right to collect maintenance and nuisance abatement charges as part of its superpriority lien. The letter did not address such charges at all, and there is no indication that such charges were part of the HOA's lien. *Cf. Bank of Am.*, 134 Nev. at 607-08, 427 P.3d at 118 (concluding that a materially similar tender letter was not impermissibly conditional and noting that "the HOA did not indicate that the property had any charges for maintenance or nuisance abatement").

superpriority amount, La Jolla'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 BOA. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

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

______________________, C.J.
Gibbons

______________________, J.
Tao

______________________, J.
Bulla

cc: Hon. Valerie Adair, District Judge
Clark Newberry Law Firm
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[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.