IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICARDO FOJAS,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 78281-COA

FILED

APR 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ricardo Fojas appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, 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, Bank of America, N.A. (BOA)—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 the predecessor to Fojas purchased the property. In the underlying action against Fojas, BOA sought to quiet title and a declaration that its deed of trust survived the foreclosure sale. 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 Fojas 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. *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 Fojas took the property subject to BOA'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). We reject Fojas' argument that, assuming the tender was delivered, it 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: 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, Fojas' argument that he 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).

We decline to consider Fojas' remaining arguments—that BOA's claims were time-barred under the statute of limitations and that BOA failed to prove that the tender was delivered—as Fojas failed to raise those arguments below, and they are therefore waived. *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."). 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.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[1]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. Mark R. Denton, District Judge
Ricardo Fojas
Akerman LLP/Las Vegas
Eighth District Court Clerk