IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,
Appellant,
vs.
BANK OF AMERICA, N.A.; AND FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondents.

No. 78609-COA

FILED

APR 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Richard Scotti, 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, counsel for 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 the predecessor to RH purchased the property. Ultimately, RH initiated the underlying action to quiet title to the property, and BOA counterclaimed seeking the same. 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 RH 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 RH 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 RH's argument that BOA failed to prove that the tender was actually delivered, as there is circumstantial evidence in the record of delivery—including copies of the tender letter and check, as well as a printout from BOA's counsel's internal filing system reflecting that the tender was delivered to the HOA foreclosure agent and rejected—and RH has failed to point to anything in the record to rebut that evidence. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment). Likewise, we reject RH's argument that BOA failed to establish the true amount of the superpriority lien because it relied on a statement of account from a different property within the same HOA when calculating the amount, as that was also unrebutted circumstantial evidence proving BOA's case. *See id.*

Moreover, RH's speculation that the superpriority amount may have included charges for maintenance or nuisance abatement cannot defeat summary judgment. *See In re Connell Living Tr.*, 133 Nev. 137, 140,

393 P.3d 1090, 1093 (2017) (recognizing that speculation is insufficient to defeat summary judgment). And we reject RH's argument that the tender letter accompanying the check contained impermissible conditions because it supposedly misstated the law pertaining to maintenance or nuisance abatement charges. The letter did not address such charges at all, and there is no indication that they were part of the HOA's lien in this case. *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"). 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, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk