IN THE COURT OF APPEALS OF THE STATE OF NEVADA

5445 INDIAN CEDAR TRUST,
Appellant,
vs.
LADERA PARK HOMEOWNERS ASSOCIATION, A DOMESTIC NON-PROFIT CORPORATION; AND DITECH FINANCIAL, LLC,
Respondents.

No. 76672-COA

ORDER OF AFFIRMANCE

5445 Indian Cedar Trust (Indian Cedar) appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), 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, the predecessor to respondent Ditech Financial, LLC (Ditech)—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 Indian Cedar purchased the property. Ditech filed the underlying action seeking to quiet title, and Indian Cedar counterclaimed seeking the same. Both parties moved for summary judgment, and the district court ruled in Ditech's favor, finding

that the tender extinguished the superpriority portion of the HOA's lien such that Indian Cedar took title to the property subject to Ditech'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 Indian Cedar took the property subject to Ditech'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 Indian Cedar's argument that the tender did not extinguish the superpriority lien and instead constituted an assignment of the HOA's superpriority rights to Ditech's predecessor. *See id.* at 609, 427 P.3d at 119 ("Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land."). Further, the conditions that Indian Cedar challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d] a right to insist."[1]

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[1]We reject Indian Cedar's argument that the tender letter accompanying the check contained impermissible conditions because it supposedly misstated the law pertaining to maintenance or nuisance

Id. at 607-08, 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 Ditech's predecessor 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 Indian Cedar'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 Prop.: 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 superpriority amount, Indian Cedar's argument that it was a bona fide purchaser and

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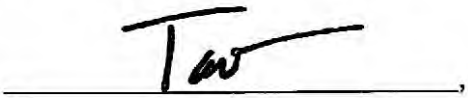
abatement charges. The letter did not address such charges at all, and there is no indication that they were part of the HOA's lien in this case. *Cf. id.* at 607-08, 427 P.3d at 118 (concluding that a materially similar tender letter was not impermissibly conditional and noting that "the HOA did not indicate that the property had any charges for maintenance or nuisance abatement").

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 Ditech, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, and we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk

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[2]In light of our disposition, we conclude that the district court properly dismissed Ditech's claims against the HOA as moot. Moreover, 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.