

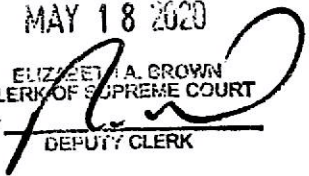
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC,
Appellant,
vs.
SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 77553-COA

FILED

MAY 18 2020

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nationstar Mortgage, LLC (Nationstar), appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

The original owner of the subject property failed to make periodic payments to both of his homeowners' associations, Presidio Community Association (Presidio) and Seven Hills Master Community Association (Seven Hills). Both Presidio and Seven Hills recorded separate notices of delinquent assessment liens and later notices of default and elections to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Seven Hills ultimately did not foreclose, but Presidio did. Prior to the sale, the predecessor to Nationstar—holder of the first deed of trust on the property—contacted Seven Hills' foreclosure agent in an attempt to satisfy the superpriority portion of its lien, and the agent refused to provide a payoff amount. But Nationstar's predecessor did not contact Presidio or its foreclosure agent or otherwise make any attempt to satisfy any portion of Presidio's lien.

Respondent SFR Investments Pool 1, LLC (SFR), purchased the property at the foreclosure sale, and Nationstar initiated the underlying action to quiet title. SFR counterclaimed seeking the same, and both parties later moved for summary judgment. The district court ruled in SFR's favor, finding that no effort was made to satisfy any portion of Presidio's lien and that the foreclosure sale therefore extinguished 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.

On appeal, Nationstar essentially contends that Seven Hills' agent's failure to provide a payoff amount to Nationstar's predecessor in response to its offer to tender the superpriority portion of Seven Hills' lien—in conjunction with the agent's stated belief that a homeowners' association (HOA) does not have a superpriority lien until the holder of the first deed of trust forecloses on its interest—shows that any tender would have been futile and that the obligation to tender was therefore excused. *See 7510 Perla Del Mar Ave Tr. v. Bank of Am., N.A.*, 136 Nev., Adv. Op. 6, 458 P.3d 348, 351 (2020) (holding that the obligation to tender is excused when it is apparent that the obligee would reject it). However, Nationstar does not

dispute that its predecessor never contacted Presidio or its foreclosure agent in an attempt to pay the superpriority portion of Presidio's lien.

Instead, Nationstar vaguely argues that, because Seven Hills' covenants, conditions, and restrictions (CC&Rs) control in the event of a conflict with Presidio's, any tender to Presidio would have also been futile. But Nationstar fails to identify any relevant authority or present any cogent argument as to why a subordinate HOA would be bound by a master HOA's legal opinions, representations, or policies concerning liens under NRS Chapter 116, especially where their respective CC&Rs provide (as they do here) that each association adopts its own budget and is responsible for levying and collecting its own assessments. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by relevant authority or cogent argument); *see also S. Highlands Cmty. Ass'n v. San Florentine Ave. Tr.*, 132 Nev. 24, 25-26, 365 P.3d 503, 504 (2016) (recognizing that two HOAs may have separate and distinct delinquent assessment liens on one property (citing NRS 116.3116(4) (2013))).

Further, we reject Nationstar's contention that there is evidence in the record showing that Presidio would have rejected any tender as a matter of policy. Aside from its misplaced reliance on the statements of Seven Hills' agent, Nationstar fails to identify any evidence in the record demonstrating that its predecessor declined to tender any funds to Presidio because that entity or its agent had a known policy of rejecting such tenders. *Cf. Perla Del Mar*, 136 Nev., Adv. Op. 6, 458 P.3d at 351-52 (affirming the district court's determination that tender was futile where the evidence at trial demonstrated that the HOA's foreclosure agent had a policy of rejecting any tender for less than the full lien amount and that the

tendering party knew of that policy). Nationstar points only to a single line of argument Presidio presented below in its opposition to Nationstar's motion for summary judgment, wherein Presidio stated that "[e]ven if [Nationstar's predecessor] had tr[ie]d to pay a portion of the lien, Presidio was not obligated to accept only partial payment of its lien from a third-party payor." But legal arguments of counsel are not evidence, *see Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014), and even if they were, this particular statement does not demonstrate that Presidio or its agent in fact had a policy of rejecting similar tenders and that Nationstar's predecessor knew of that policy. *Cf. Perla Del Mar*, 136 Nev., Adv. Op. 6, 458 P.3d at 351-52.


In light of the foregoing, Nationstar has failed to show that its obligation to tender the superpriority amount of Presidio's lien was excused, and the foreclosure sale therefore extinguished Nationstar's deed of trust.¹

¹We discern no abuse of discretion in the district court's refusal to set the sale aside on grounds of fraud, unfairness, or oppression, as Nationstar has failed to demonstrate that the supposed futility of tender to Seven Hills in any way justified its failure to contact Presidio or otherwise affected the sale price. *See Res. Grp., LLC ex rel. E. Sunset Rd. Tr. v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 55, 437 P.3d 154, 160 (2019) ("A district court's decision [whether or not] to set aside a foreclosure sale on equitable grounds is subject to an abuse of discretion standard of review."); *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 748, 405 P.3d 641, 647 (2017) (noting that "inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale absent additional proof of some element of fraud, unfairness, or oppression *as accounts for and brings about* the inadequacy of price" (emphasis added) (internal quotation marks omitted)). Additionally, because its deed of trust was extinguished, we need not address Nationstar's argument that SFR was not a bona fide purchaser.

See id. at 348 (noting that the proper foreclosure of an HOA's lien for delinquent assessments extinguishes a first deed of trust). Thus, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Akerman LLP/Las Vegas
Kim Gilbert Ebron
Eighth District Court Clerk