

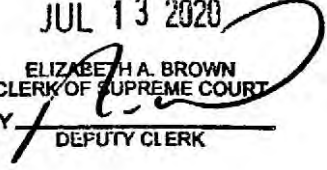
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
Appellant,
vs.
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
(MERS) AS NOMINEE FOR
COUNTRYWIDE BANK, N.A., A
BUSINESS ORGANIZATION FORM
UNKNOWN; THE BANK OF NEW
YORK MELLON, F/K/A THE BANK OF
NEW YORK AS SUCCESSOR IN
INTEREST TO JPMORGAN CHASE
BANK, N.A., AS TRUSTEE FOR
CERTIFICATEHOLDERS BEAR
STEARNS ALT-A TRUST 2005-7, MTG.
PASS-THROUGH CERTIFICATES,
SERIES 2005, A BUSINESS
ORGANIZATION FORM UNKNOWN;
RECONTRUST COMPANY, N.A. AS
TRUSTEE; AND NATIONSTAR
MORTGAGE, LLC,
Respondents.

No. 78000-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

SFR Investments Pool 1, LLC (SFR), appeals from a district court order of dismissal, certified as final pursuant to NRCP 54(b), in a quiet title action.¹ Eighth Judicial District Court, Clark County; Rob Bare, Judge.

¹In substance, SFR challenges the district court's order granting the respondents' motion for summary judgment against it.

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, the loan servicer for the predecessor to respondent Nationstar Mortgage, LLC (Nationstar²)—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 SFR purchased the property. Ultimately, SFR sought to quiet title to the property, and both SFR and Nationstar moved for summary judgment. The district court ruled in Nationstar's favor, finding that the tender satisfied the superpriority portion of the HOA's lien such that SFR took title to the property subject to 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.

²All of the respondents were at some point the beneficiary or the trustee under the first deed of trust. We refer to all of the respondents collectively herein as "Nationstar."

Here, the district court correctly found that the tender of nine months of past due assessments satisfied the superpriority lien such that SFR took the property subject to Nationstar'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).³ We reject SFR's contention that the tender at issue here was impermissibly conditional. *See id.* at 607, 427 P.3d at 118 ("In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist."). SFR argues that the tender letter misstated the law with respect to maintenance and nuisance abatement charges, and that it required the HOA to waive its right to collect such fees and costs as part of its superpriority lien. But the letter did not address such charges at all, and there is no indication that such charges 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"). Accordingly, such charges are not relevant here.

Further, to the extent SFR contends that it was a bona fide purchaser entitled to take the property free and clear of the first deed of

³To the extent SFR requests that this court overrule *Bank of America and Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 373 P.3d 66 (2016), we cannot overrule Nevada Supreme Court precedent. *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"); *cf. People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of [the California Supreme Court]." (alteration in the original) (internal quotation marks omitted)).

trust, any such argument is unavailing because the sale was void as to the superpriority amount of the HOA's lien. *See id.* at 612, 427 P.3d at 121 (noting that a party's bona fide purchaser status is irrelevant when a superpriority tender renders the sale void as a matter of law). We also reject SFR's arguments that the equities weigh in its favor on grounds of waiver, estoppel, and unclean hands, as SFR failed to raise those issues before the district court, 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 Nationstar, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁴Insofar 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. Rob Bare, District Judge
Kim Gilbert Ebron
Akerman LLP/Las Vegas
Eighth District Court Clerk