

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR THE
HOLDERS OF NEW CENTURY HOME
EQUITY LOAN TRUST, SERIES 2005-
A, ASSET BACKED PASS THROUGH
CERTIFICATES; AND RECONTRUST
COMPANY,
Appellants,
vs.
VILLA VECCHIO CT TRUST,
Respondent.

No. 79011-COA

FILED

OCT 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Deutsche Bank National Trust Company (Deutsche Bank) and Recontrust Company (Recontrust) appeal from a district court order granting a motion for summary judgment, certified as final pursuant to NRCF 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The original owner of the subject property failed to make periodic payments to his 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 former servicer of the loan secured by the deed of trust at issue in this case 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. Respondent Villa Vecchio Ct Trust (Villa Vecchio) later acquired the property from the purchaser at the sale and commenced the underlying proceeding against Deutsche Bank and Recontrust, which are the current holder of the deed of trust and its designated trustee (collectively referred to as Deutsche Bank). The parties then asserted counterclaims for quiet title and eventually filed competing motions for summary judgment, and the district court ruled in favor of Villa Vecchio, finding that it was a bona fide purchaser (BFP) that took title to the property without notice of the tender. This appeal followed.

On appeal, Deutsche Bank challenges the district court's decision, arguing that the tender satisfied the superpriority portion of the HOA's lien and that Villa Vecchio's purported BFP status was therefore irrelevant. 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.

When the district court entered its order granting summary judgment in favor of Villa Vecchio, it did not have the benefit of the supreme court's decision in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 427 P.3d 113 (2018). In that case, the supreme court held

that the tender of nine months of past due assessments satisfies an HOA's superpriority lien such that the purchaser takes title to the property subject to a prior deed of trust. *Id.* at 605, 427 P.3d at 116. Moreover, the supreme court explained that, since a valid tender renders a foreclosure sale on the superpriority portion of an HOA's lien void, the BFP doctrine does not protect the purchaser at the foreclosure sale or its successors in interest. *Id.* at 612, 427 P.3d at 121 (explaining that a party's BFP status is irrelevant following a valid tender since the tender cures the default as to the superpriority portion of an HOA's lien and renders the associated portion of an HOA's foreclosure sale void). And because our review of the record in the present case demonstrates that Villa Vecchio's purported BFP status was irrelevant and that it took title to the property subject to Deutsche Bank's deed of trust since the tender was valid and the HOA's superpriority lien was therefore satisfied prior to the foreclosure sale, we conclude that the district court erred by granting summary judgment for Villa Vecchio rather than Deutsche Bank. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

In this respect, we reject Villa Vecchio's argument that the tender did not extinguish the superpriority lien and instead constituted an assignment of the HOA's superpriority rights to Deutsche Bank. *See Bank of Am.*, 134 Nev. 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 Villa Vecchio challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d] a right to insist." *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 the former loan servicer 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).

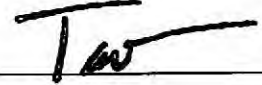
Additionally, we reject Villa Vecchio's argument that the tender could not have extinguished the superpriority lien because the HOA's foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot validate an otherwise 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).

Thus, because the foregoing leads us to conclude that the district court erred by granting Villa Vecchio's motion for summary judgment and denying Deutsche Bank's motion for the same, we reverse and remand this matter to the district court for entry of judgment in favor of Deutsche Bank. *See SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 135 Nev.

346, 352, 449 P.3d 461, 466 (2019) (reversing an order granting one party summary judgment and directing entry of judgment on the opposing party's counter-motion for summary judgment); *SFR Invs. Pool 1, LLC v. First Horizon Home Loans*, 134 Nev. 19, 25, 409 P.3d 891, 895 (2018) (doing the same).

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Department 18, Eighth Judicial District Court
Hon. Michael Villani, District Judge
Akerman LLP/Las Vegas
Law Offices of Michael F. Bohn, Ltd.
Eighth District Court Clerk

¹Insofar 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.