

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMIACK IRREVOCABLE TRUST, BY
ITS TRUSTEES JOEL AND SANDRA
STOKES, A NEVADA TRUST,
Appellant,

vs.

BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent/Cross-Appellant,

vs.

ELKHORN TWILIGHT HOMEOWNERS
ASSOCIATION, A NEVADA NON-
PROFIT CORPORATION,
Cross-Respondent.

No. 78939-COA

FILED

OCT 09 2020

ELIZABETH S. DEAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jimijack Irrevocable Trust (Jimijack) appeals and Bank of America, N.A. (BOA), cross-appeals from district court orders granting summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association. Cross-respondent Elkhorn Twilight Homeowners Association (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, BOA—holder of the first deed of trust on the property—tendered payment to the HOA’s foreclosure agent for nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale. Jimijack later acquired the property from the successor to the purchaser at the foreclosure sale and initiated the underlying action seeking to quiet title, and BOA counterclaimed seeking the same. BOA also asserted alternative claims against the HOA. Ultimately, BOA moved for summary judgment against Jimijack, which the district court granted, finding that the tender satisfied the superpriority portion of the HOA’s lien such that Jimijack took title to the property subject to BOA’s deed of trust. On that ground, the district court also granted summary judgment in favor of the HOA with respect to BOA’s claims against it. 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.

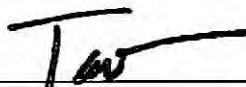
Here, the district court correctly found that the tender of nine months of past due assessments satisfied the HOA's superpriority lien such that Jimijack took the property subject to BOA's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Jimijack's argument that BOA failed to produce competent evidence showing that the tender was actually delivered, as that assertion is belied by the record. BOA did in fact produce evidence of delivery—including copies of the tender letter and check, as well as a run slip from a courier service reflecting that the HOA's foreclosure agent refused the tender—which Jimijack failed to rebut. *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).

We likewise reject Jimijack's argument that the letter accompanying the tender check contained impermissible conditions because it supposedly misstated the law regarding maintenance and 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"). Accordingly, 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.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Boyack Orme & Anthony
Eighth District Court Clerk

¹In light of our disposition, we likewise affirm the district court's summary judgment in favor of the HOA, as BOA's only contention on cross-appeal is that it should be allowed to proceed against the HOA in the event that the summary judgment against Jimijack is reversed.