

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JJND ENTERPRISES, LLC,
Appellant,
vs.
DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR THE
HOLDERS OF GSAMP TRUST 2005-
AHL MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-AHL,
Respondent.

No. 79592-COA

FILED

OCT 16 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

JJND Enterprises, LLC (JJND), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; David Barker, Senior 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, a notice of default and election to sell, and later a notice of trustee's sale to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Prior to the sale, the servicer for the predecessor to respondent Deutsche Bank National Trust Company (Deutsche Bank)—holder of the first deed of trust on the property—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, where the HOA purchased the property. JJND later acquired the property from the HOA and commenced the underlying quiet title action against Deutsche Bank, which countersued for the same.

The parties eventually filed competing motions for summary judgment, and the district court ruled in favor of Deutsche Bank. In particular, the district court found that, because the notice of trustee's sale indicated that the foreclosure sale would be subject to Deutsche Bank's deed of trust, the HOA only foreclosed on the subpriority portion of its lien. Thus, the district court concluded that, when JJND subsequently acquired the property from the HOA, it too took title subject to Deutsche Bank'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, JJND disputes whether the foreclosure sale was limited to the subpriority portion of the HOA's lien, arguing that the language in the notice of trustee's sale was based on the HOA trustee's mistaken interpretation of Nevada law, which cannot alter the effect of the foreclosure sale. *See Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 622, 426 P.3d 593, 597 (2018) (recognizing that a party's subjective belief as to the effect of a foreclosure sale cannot alter the sale's actual effect). Moreover, JJND argues that the trustee's deed upon sale demonstrates that the HOA foreclosed on both the superpriority and subpriority portions of its

lien since the notice states that the sale occurred pursuant to the HOA trustee's powers under "NRS 116.33162 to NRS 116.33168."¹

However, even if we were to agree with JJND regarding its challenge to the district court's conclusion that only the subpriority portion of the lien was foreclosed upon, that would not end our analysis. Notably, Deutsche Bank argues, as it did below, that summary judgment in its favor was also warranted based on the tender made to the HOA foreclosure agent. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018) (holding that an "unconditional tender of the superpriority amount" of the HOA's lien "results in the buyer at foreclosure taking the property subject to the deed of trust"); *see also Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) ("A respondent may . . . , without cross-appealing, advance any argument in support of the judgment even if the district court rejected or did not consider the argument.").

In its opening brief, JJND addressed this tender issue to a limited extent by baldly asserting that there was no evidence of a tender presented below. But in its answering brief, Deutsche Bank supported its position on this matter by pointing to specific evidence in the record of a tender and by presenting extensive argument concerning why the tender operated to satisfy any superpriority lien that the HOA may have had. And because JJND did not anticipate these substantive arguments in its opening brief or otherwise file a reply brief to address them, it waived any challenge to Deutsche Bank's position on the tender issue. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when

¹While NRS Chapter 116 does not include any subsections numbered as such, these statutory references are seemingly to NRS 116.31162 through NRS 116.31168, which govern HOA lien foreclosures.

respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge cannot be regarded as unwitting and in our view constitutes a clear concession by appellants that there is merit in respondents' position"). As a result, JJND failed to demonstrate that the district court erred by granting summary judgment in Deutsche Bank's favor. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

²Insofar 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.