IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, L.P., F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.,
Respondent.

No. 79629-COA

FILED

OCT 29 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Premier One Holdings, Inc. (Premier), appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA—through its foreclosure agent, Nevada Association Services, Inc. (NAS)—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, respondent Bank of America, N.A. (BOA)—the beneficiary of the first deed of trust on the property—tendered payment through its counsel, Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer), to NAS for an amount exceeding nine months of past due assessments. After NAS rejected the tender, BOA mailed a check to NAS for the full amount listed in the notice of default and election to sell. Over nine months later, because delinquent assessments continued to accrue, NAS recorded a second notice of delinquent assessment

lien. BOA took no action in response to the second notice, and NAS ultimately foreclosed on the property and sold it to Premier.

Premier later initiated the underlying action against BOA seeking to quiet title to the property, and the district court granted summary judgment in Premier's favor. The Supreme Court of Nevada then vacated that judgment and remanded for the district court to consider BOA's NRCP 56(f) request for further discovery on the issue of fraud, unfairness, or oppression, and to evaluate the legal significance of BOA's tender in light of *Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc.*, 133 Nev. 462, 467, 401 P.3d 728, 731-32 (2017), in which the supreme court held that, after rescinding a superpriority lien, an HOA may thereafter assert a separate superpriority lien on the same property based on delinquent assessments accruing after the rescission of the initial lien. *Bank of Am., N.A. v. Premier One Holdings, Inc.*, Docket No. 70529 (Order Vacating Judgment and Remanding, July 20, 2018).

Following remand and further litigation, both parties moved for summary judgment, and the district court ruled in BOA's favor. The court concluded that the first notice of delinquent assessment lien was the operative notice for purposes of foreclosure under *Property Plus*, as NAS never rescinded it. Accordingly, the court determined that BOA's tender satisfied the superpriority portion of the HOA's lien and preserved the first deed of trust. The court further concluded that even if the second notice created a separate lien, BOA's obligation to tender the superpriority portion of that lien was excused because it was apparent that NAS would have rejected any tender purporting to do so. In light of its disposition, the court did not consider the issue of fraud, unfairness, or oppression. This appeal followed.

On appeal, Premier contends that BOA's deed of trust was extinguished by the foreclosure sale because the second notice of delinquent assessment lien created a separate superpriority lien that BOA failed to satisfy, and the HOA was not required to rescind the first lien because it was completely satisfied by BOA's second attempt at payment. Premier also contends that BOA failed to produce sufficient evidence to support the district court's application of the excuse-of-tender doctrine. Finally, Premier contends that the district court should have ruled in its favor on equitable grounds.

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.

Because we conclude that the district court properly applied the excuse-of-tender doctrine, we need not decide whether Premier is correct that the second notice created a separate superpriority lien and that rescission of the first lien was not required. BOA produced sufficient evidence below—including deposition testimony from employees of NAS—to show that NAS "had a known policy of rejecting [superpriority] payments" such that BOA's obligation to tender the superpriority portion of the second lien—if any such lien existed—was excused. *7510 Perla Del Mar Ave Tr. v. Bank of Am., N.A.*, 136 Nev. 62, 63, 458 P.3d 348, 349 (2020). And

Premier fails to identify any evidence in the record rebutting BOA's evidence. *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).

Instead, Premier contends that it was not reasonable for BOA to assume that NAS would have rejected a second superpriority tender because, in between the time that the second notice was served and the time of foreclosure, there were changes to NRS Chapter 116 and the industry's understanding of the law surrounding HOA foreclosures was constantly evolving.[1] But Premier does not identify what those changes were or how they in any way called into question whether NAS continued to have a policy of rejecting superpriority tenders, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the

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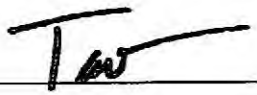
[1]Premier also contends that BOA failed to identify any evidence that either it or Miles Bauer actually formed the specific belief that a second tender with respect to the subject property would have been futile. But such evidence is not required under *Perla Del Mar*; rather, BOA need only show that it knew of NAS's policy of rejecting superpriority payments, *see* 136 Nev. at 63, 458 P.3d at 349, and one may readily imply that BOA and Miles Bauer had such knowledge in this case where NAS had already rejected a previous superpriority tender for the same property. Moreover, in his deposition, NAS's corporate counsel acknowledged that Miles Bauer had previously corresponded with NAS in hundreds of similar matters at the time in question, meaning it was well aware of NAS's policies with respect to superpriority tenders. And to the extent Premier contends that NAS accepted a previous payment from BOA for the full amount of the first lien and that BOA was therefore aware that a payment for the second lien might be accepted, BOA had no legal obligation to tender the full amount of the second lien, so any knowledge that such a tender might be accepted is irrelevant. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018) (recognizing that the tender of only the superpriority amount is sufficient to preserve a first deed of trust).

appellate courts need not consider claims unsupported by cogent argument or relevant authority), nor does Premier point to any evidence in support of the notion that NAS's policies were in flux at the time in question or that BOA should have been aware of that, *see Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (recognizing that arguments of counsel are not evidence). Premier also argues that NAS was deprived of any opportunity to make a decision or negotiate with respect to the second lien, but the notion that NAS may have diverged from its policy of rejection if BOA had inquired about the second lien is mere speculation insufficient to defeat summary judgment. *See In re Connell Living Tr.*, 133 Nev. 137, 140, 393 P.3d 1090, 1093 (2017) (recognizing that speculation is insufficient to defeat summary judgment).

Because the district court correctly determined that BOA was excused from tendering the superpriority amount of the supposed second lien, it properly granted summary judgment in BOA's favor. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. And because the excused tender operated to preserve BOA's deed of trust as a matter of law, we need not consider the parties' alternative arguments concerning equitable relief. *See Perla Del Mar*, 136 Nev. at 65 n.1, 458 P.3d at 350 n.1. Thus, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Adriana Escobar, District Judge
Morris Law Center
Akerman LLP/Las Vegas
Eighth District Court Clerk