IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GOLDEN CREEK HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION,
Respondent.

No. 80411-COA

FILED

APR 12 2021

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

ORDER OF AFFIRMANCE

Golden Creek Holdings, Inc. (Golden), appeals from a district court summary judgment, certified as final pursuant to NRCP 54(b), in an interpleader and quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, 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, counsel for Bank of America, N.A. (BOA)—the beneficiary of the first deed of trust on the property—inquired with the HOA's foreclosure agent, Nevada Association Services (NAS), as to the superpriority amount of the HOA's lien. NAS never responded to the inquiry and proceeded to foreclose on the property. A predecessor to Golden purchased the property at the foreclosure sale, and Golden later acquired the property and substituted into the underlying

interpleader action, where it sought a ruling that BOA's deed of trust was extinguished by the HOA's foreclosure sale.

The parties ultimately moved for summary judgment, and the district court ruled in BOA's favor, concluding that NAS would have rejected a superpriority tender from BOA and that BOA's obligation to tender was therefore excused. Golden then filed a motion to alter or amend the judgment and stay the proceedings on grounds that the supreme court had just granted en banc reconsideration in *Bank of America, N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. 42, 435 P.3d 1217 (2019), *vacated on reconsideration en banc*, Docket No. 73785 (Order Affirming in Part, Reversing in Part, and Remanding, May 7, 2020), which was the seminal excuse-of-tender opinion in the HOA foreclosure context at the time in question. The district court denied the motion, and 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.

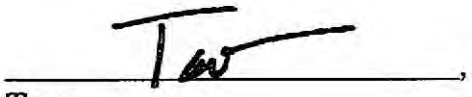
Golden contends on appeal that the district court erred in relying on *Jessup* to conclude that BOA's obligation to tender was excused,

as the supreme court later vacated that opinion, and because BOA supposedly failed to produce evidence that NAS had a known policy of rejecting superpriority tenders as required to excuse tender under *7510 Perla Del Mar Ave Tr. v. Bank of America, N.A.*, 136 Nev. 62, 63, 458 P.3d 348, 349 (2020). But BOA did produce such evidence; namely, deposition and trial testimony from NAS's corporate counsel and another of its employees from cases similar to this one confirming that NAS would have rejected a superpriority tender from BOA's counsel at the time in question (September 2012) and that BOA's counsel was well aware of NAS's position on this point in light of the hundreds of other matters where BOA had inquired with NAS about an HOA's superpriority lien. *Cf. id.* at 63-64, 67, 458 P.3d at 349, 351-52 (holding that substantial evidence adduced at trial—similar to the evidence at issue here—showed that BOA and its counsel knew of NAS's policy of rejecting superpriority tenders as of March 2012). And Golden fails to cogently challenge the district court's reliance on this evidence, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument and relevant authority), or point to any contrary evidence indicating that NAS would have accepted a superpriority tender at the time in question. *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).

Given the foregoing, Golden has failed to demonstrate that it is entitled to any relief, and we therefore

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[1]In light of our disposition, we necessarily reject Golden's argument that the district court abused its discretion in denying the motion to alter or amend the judgment and stay the proceedings. And insofar 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.