

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 78453-COA

FILED

APR 16 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
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 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 her 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 respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for an amount equal to nine months of the HOA's assessments. The agent rejected the tender, however, and proceeded with the foreclosure sale, at which Premier purchased the property.

The HOA foreclosure agent later initiated the underlying interpleader action with respect to an unrelated property, and BOA sought to quiet title to that property against Premier. Premier, in turn, filed a counterclaim against BOA seeking to quiet title to the unrelated property

and many others, including the subject property.¹ BOA eventually moved for summary judgment with respect to the subject property, which the district court granted, finding that the tender satisfied the superpriority portion of the HOA's lien such that Premier took title to the property subject to BOA'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.

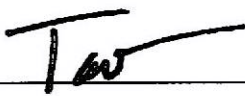
Here, the district court correctly determined that the tender of nine months of past due assessments satisfied the superpriority lien such that Premier took the property at issue subject to BOA's deed of trust. See *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Premier's sole argument on appeal, which is that

¹While the underlying proceeding was pending before the district court, Premier transferred its interest in the subject property to a nonparty. But that transfer does not affect Premier's ability to participate in this matter. Cf. NRCP 25(c) ("If an interest is transferred, the action may be continued by or against the original party unless the [district] court [orders otherwise]."); *Triple Quest, Inc. v. Cleveland Gear Co.*, 627 N.W.2d 379, 383 (N.D. 2001) ("The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named." (internal quotation marks omitted)).

BOA failed to prove that the tender was actually delivered. Indeed, there is circumstantial evidence in the record of delivery—specifically, copies of the tender letter and check, as well as a printout from BOA’s counsel’s internal filing system reflecting that the tender was delivered to the HOA’s foreclosure agent and rejected—and Premier has failed to point to anything in the record to rebut that 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). Thus, 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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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