

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZAISAN ENTERPRISES LLC; AND
THE FALLS AT RHOADS RANCH
CONDOMINIUM OWNERS
ASSOCIATION, INC., A NON-PROFIT
CORPORATION.

Appellants,

vs.

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK AS
TRUSTEE FOR THE BENEFIT OF THE
CERTIFICATE HOLDERS OF THE
CWALT, INC., ALTERNATIVE LOAN
TRUST 2004-10CB, MORTGAGE PASS
THROUGH CERTIFICATES, A
NATIONAL BANKING ASSOCIATION;
AND COUNTRYWIDE HOME LOANS,
INC.,

Respondents.

No. 75014-COA

FILED

JAN 25 2019

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

ORDER OF AFFIRMANCE

Zaisan Enterprises LLC and The Falls at Rhoads Ranch Condominium Owners Association, Inc., appeal from a summary judgment order in a quiet title action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association, appellant The Falls. The property was subject to a first deed of trust that respondent The Bank of New York Mellon (BNYM) acquired, and a second deed of trust held by respondent Countrywide Home Loans. The Falls 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. Counsel on behalf of BNYM sought to pay off the past due assessments and other amounts which constituted the superpriority portion of the delinquent assessment lien. The Falls' agent rejected the offer of payment.

Appellant Zaisan then purchased the subject property at an HOA foreclosure sale. Zaisan subsequently filed a quiet title action, asserting that the foreclosure sale extinguished BNYM's and Countrywide's deeds of trust encumbering the subject property, and naming The Falls and the prior owners as additional defendants. The parties filed crossmotions for summary judgment. The district court found in favor of BNYM and Countrywide, finding that the prior tender extinguished the superpriority lien, and Zaisan therefore took the property subject to both BNYM's and Countrywide's deeds of trust at the HOA foreclosure sale. 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.

In accordance with Nevada Supreme Court precedent on the issue of tender in HOA foreclosure procedures, the district court rightfully found that the tender, which exceeded the amount of the past due assessments, extinguished the superpriority lien, leaving the buyer at

foreclosure to take the property subject to the deeds of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 116 (2018). Further, the conditions that appellants challenge in the letter accompanying the tender payment are “conditions on which the tendering party has a right to insist.” *Id.* at ___, 427 P.3d at 118 (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount, *i.e.*, nine months of back due assessments, was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). Appellants also argue that the tender was insufficient because BNYM’s agent misidentified itself in the letter accompanying the tender payment. This argument does not have any impact on the extinguishment of the superpriority lien, and appellants fail to cite any authority that requires the payment of a superpriority lien by any specific party. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting this court need not consider claims that are not cogently argued or supported by relevant authority).


Further, Zaisan’s argument that the district court should have considered whether Zaisan was a bona fide purchaser, so that the equities warranted eliminating the deeds of trust, does not apply because the tender of the superpriority lien amount rendered any foreclosure on the superpriority amount void. *See Bank of Am.*, 134 Nev. at ___, 427 P.3d at 121 (noting that a party’s bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void); *cf. Shadow Wood Homeowners Ass’n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016) (discussing the balance of equities for a bona fide purchaser in a quiet title action following an HOA foreclosure sale). Likewise, because the

superpriority lien was voided by the tender, the foreclosure that resulted occurred on a subpriority lien, which means, pursuant to the version of NRS 116.3116 in effect at the time, that the district court properly determined that Zaisan took the property subject to all secured interests ahead of it in priority, including the second deed of trust here.

In light of the foregoing, we conclude that no genuine issues of material fact existed to prevent summary judgment in favor of BNYM and Countrywide. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Gloria Sturman, District Judge
Lipson Neilson P.C.
Wolfe Thompson
Wright, Finlay & Zak, LLP/Las Vegas
Akerman LLP/Las Vegas
Eighth District Court Clerk