

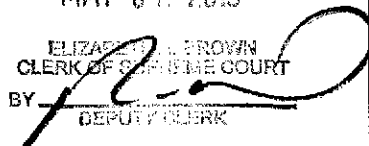
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 10007  
LIBERTY VIEW,  
Appellant,  
vs.  
BANK OF AMERICA, N.A.,  
Respondent.

No. 75394-COA

**FILED**

MAY 07 2019

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Saticoy Bay LLC Series 10007 Liberty View appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

The original owner of the subject property failed to make periodic payments to its 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. Respondent Bank of America, N.A., tendered payment to the HOA foreclosure agent for an amount greater than nine months of back due assessments. The HOA rejected the payment and subsequently sold its interest in various accounts receivables, including the delinquent assessments on the subject property. The HOA's agent, nonetheless, proceeded with its foreclosure sale.


Saticoy Bay purchased the subject property at the HOA foreclosure sale. Saticoy Bay then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The parties later filed cross-motions for summary judgment and the district court ruled in favor of Bank of America, finding that its tender extinguished the HOA's superpriority lien and that the HOA's sale of its interest in the delinquent assessments also served to extinguish the superpriority lien. Thus, the district court held that the subject property was still subject to Bank of America's first 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.

We determine that the district court rightfully found that Bank of America's tender in an amount greater than the nine months of past due assessments extinguished the superpriority lien, leaving the buyer at foreclosure to take the property subject to the deed of trust. *See Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. \_\_\_, \_\_\_, 427 P.3d 113, 116, 118 (2018) (explaining that a plain reading of NRS 116.3116 indicates

that tender of the superpriority amount, *i.e.*, nine months of back due assessments, is sufficient to satisfy the superpriority lien and the first deed of trust holder has a legal right to insist on preservation of the first deed of trust). As such, the deed of trust holder is not required to take any further action to preserve its tender for the tender to effectively eliminate the superpriority lien. *See id.* at \_\_\_, 427 P.3d at 120. Further, Saticoy Bay's argument that the tender was rightfully rejected by the HOA's agent lacks any support in the record, and the inferences urged by Saticoy Bay do not create a genuine issue of material fact to defeat summary judgment. *See Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014) (noting that arguments of counsel are not evidence and do not establish the facts of the case); *Wood*, 121 Nev. at 731, 121 P.3d. at 1030-31. Further, Saticoy Bay's argument that the district court erred in not finding that Saticoy Bay was a bona fide purchaser, such that the equities warranted eliminating the deed of trust, is wholly unpersuasive 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, Inc. 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).

In light of the foregoing, we conclude that no genuine issues of material fact exists to prevent summary judgment in favor of Bank of America.<sup>1</sup> See *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Linda Marie Bell, Chief Judge  
Law Offices of Michael F. Bohn, Ltd.  
Akerman LLP/Las Vegas  
Eighth District Court Clerk

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<sup>1</sup>Based on our decision set forth above, we do not need to address the commercial reasonableness of the sale, the Federal Foreclosure Bar, or the parties' other arguments.