

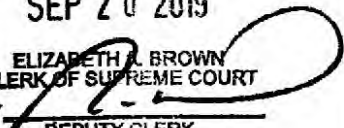
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WHITE LANTERN, LLC,
Appellant/Cross-Respondent,
vs.
BANK OF AMERICA, N.A.,
Respondent/Cross-Appellant.

No. 75262-COA

FILED

SEP 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

White Lantern, LLC appeals and Bank of America, N.A. cross-appeals from a district court order granting summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of lien for, among other things, unpaid assessments 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, Bank of America, N.A. (BANA) tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, and the agent accepted the payment. The HOA then proceeded with its foreclosure sale.

White Lantern, LLC (White Lantern) later acquired the subject property from the entity that purchased it at the HOA foreclosure sale. BANA then filed an action seeking, among other relief, to quiet title to the

property, asserting that its deed of trust survived the foreclosure sale. White Lantern counterclaimed, also seeking to quiet title to the property. The parties subsequently filed cross motions for summary judgment, and the district court ruled in favor of BANA, finding that its tender extinguished the superpriority lien and that the property remained subject to BANA's first deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *See 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 found that the tender of nine months of past due assessments extinguished the superpriority lien such that the buyer at the foreclosure sale took the property subject to BANA's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev., Adv. Op. 72, 427 P.3d 113, 116 (2018). The conditions that White Lantern challenges in the letter accompanying the tender are "conditions on which

the tendering party ha[d] a right to insist.”¹ *Id.* 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). And once BANA tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 119-21 (rejecting the buyer’s arguments that the bank was required to record its tender or take further actions to keep the tender good). Moreover, given that the sale was void as to the superpriority amount, White Lantern’s argument that its predecessor was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See id.* at 121 (noting that a party’s bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void as a matter of law). Thus, in light of the foregoing, we conclude

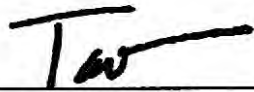
¹We note that White Lantern failed to challenge the language of the tender letter before the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). Additionally, it failed to dispute BANA’s proffered evidence that it delivered the tender to the HOA foreclosure agent and that the agent accepted the check, opting instead to argue only that BANA was required to record some instrument demonstrating that it had tendered the superpriority amount. Accordingly, we reject White Lantern’s bald assertion that a genuine dispute of material fact remains as to whether BANA delivered the tender.

that no genuine issue of material fact exists to prevent summary judgment in favor of BANA. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda M. Bell, Chief Judge
Hon. Joseph T. Bonaventure, Senior Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk

²Insofar 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. Moreover, we need not reach BANA's request on cross appeal that we reinstate its claims against the HOA and the foreclosure agent in the event of reversal.