IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., A NATIONAL ASSOCIATION, AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP,
Appellant,
vs.
PAUL PAWLIK
Respondent.[1]

No. 75859-COA

ORDER OF REVERSAL AND REMAND

Bank of America, N.A. (BOA), appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; James Crockett, 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 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. BOA tendered payment to the HOA

[1]Sunrise Ridge Master Homeowners Association and Nevada Association Services were initially respondents in this matter, but Bank of America's appeal from the order dismissing them from the underlying proceeding was itself dismissed while this matter was pending before the supreme court. *Bank of America, N.A. v. Pawlik*, Docket No. 75859 (Order Dismissing Appeal in Part, September 27, 2018). Consequently, we direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

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foreclosure agent twice for an amount that was purportedly equal to nine months of past due assessments, but the agent rejected the payments and proceeded with its foreclosure sale.

Respondent Paul Pawlik purchased the property at the HOA foreclosure sale and then commenced the underlying action in which he essentially asserted a quiet title claim premised on the foreclosure sale extinguishing BOA's deed of trust. The parties subsequently filed cross-motions for summary judgment, and the district court ruled in favor of Pawlik, finding that the foreclosure sale extinguished BOA's 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.

On appeal, BOA asserts that its tenders were for an amount equal to nine months of past due assessments, which was the amount needed to satisfy the superpriority portion of the HOA's lien. *See Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016) (holding that the superpriority portion of an HOA's lien consists of nine months of past due assessments). BOA further contends that the district court erroneously determined that its tenders

were conditional and not held open, that the HOA was justified in rejecting the tenders because it had a good-faith belief that the superpriority amount included collection fees and costs, and that Pawlik was protected as a bona fide purchaser. As he did below, Pawlik does not dispute that BOA's tenders were for an amount equal to nine months of past due assessments. As a result, any challenge to that assertion has been waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *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."). Instead, Pawlik focuses on BOA's remaining arguments, which we address below.

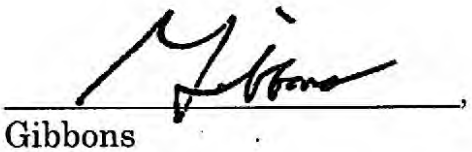
To begin, the conditional language in the tender letters at issue here included "conditions on which [BOA] ha[d] a right to insist," as the supreme court recently concluded in *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 607, 427 P.3d 113, 118 (2018). Indeed, that opinion involved a letter that included nearly identical conditional language. As a result, the district court erred in determining that the tenders were ineffective based on this conditional language. And once a valid tender was made, BOA was not required to take any further action for the tender to eliminate the superpriority portion of the HOA's lien. *Cf. id.* at 609-11, 427 P.3d at 119-21 (declining to require the deed of trust holder to take actions beyond those specifically required by NRS Chapter 116 to maintain its interest). Thus, the district court likewise erred insofar as it concluded that BOA had failed to keep the tender good.

Turning to the district court's determination that the HOA was justified in rejecting the tenders because it had a good-faith belief that the superpriority amount included collection fees and costs, we conclude that this conclusion was also erroneous. The HOA's subjective good-faith belief underlying its rejection of the tenders has no bearing on the effectiveness of BOA's tender. Indeed, BOA's tender of the superpriority amount cured the underlying default by operation of law and thereby rendered the ensuing foreclosure sale void as to the superpriority portion of the lien, and the HOA's basis for rejecting the tender could not somehow validate the void sale. *See id.* at 612, 427 P.3d at 121 (explaining that "[a] foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default"); *see also* Restatement (Third) of Property: Mortgages § 6.4(b) & cmt. c (Am. Law Inst. 1997) (stating that a party's reasons for rejecting a tender may be relevant insofar as that party may be liable for money damages but that the reason for rejection does not alter the tender's legal effect). And given that tender of the superpriority amount rendered any foreclosure on the superpriority portion of the HOA's lien void, Pawlik's status as a purported bona fide purchaser is likewise irrelevant and could not provide a basis for determining the tender was not effective. *See Bank of America*, 134 Nev. at 612, 427 P.3d at 121 (explaining that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void).

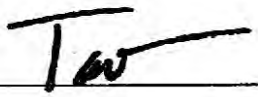
In light of the foregoing, we conclude that the tender extinguished the HOA's superpriority lien such that Pawlik took the property subject to BOA's deed of trust. *See id.* at 605, 427 P.3d at 116. And because we therefore conclude that the district court erred in granting

Pawlik's motion for summary judgment and denying BOA's motion for summary judgment, we reverse and remand this matter to the district court for entry of judgment in favor of BOA. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 135 Nev., Adv. Op. 45, 449 P.3d 461, 466 (2019) (reversing an order granting one party summary judgment and directing entry of judgment on the opposing party's countermotion for summary judgment); *SFR Invs. Pool 1, LLC v. First Horizon Home Loans*, 134 Nev. 19, 25, 409 P.3d 891, 895 (2018) (doing the same).

It is so ORDERED.[2]



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. James Crockett, District Judge
Akerman LLP/Las Vegas
Christopher V. Yergensen
Lipson Neilson P.C.
Noggle Law PLLC
Eighth District Court Clerk

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[2]Given our disposition of this appeal, we need not address the parties' remaining arguments.