IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC,
Appellant,
vs.
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP,
Respondent.

No. 76763-COA

FILED

APR 13 2020

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

ORDER OF AFFIRMANCE

SFR Investments Pool 1, LLC (SFR), appeals from a district court order granting a motion for summary judgment, certified as final under NRCP 54(b), in an interpleader and quiet title action. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

The original owners of the subject property failed to make periodic payments to their 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, 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 nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which SFR purchased the property. The HOA foreclosure agent filed the underlying interpleader action to distribute the

proceeds from the sale, and both BOA and SFR sued to quiet title to the property. Both parties moved for summary judgment, and the district court ruled in BOA's favor, finding that the tender extinguished the superpriority portion of the HOA's lien such that SFR 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.

SFR argues that the letter accompanying the tender required the HOA to accept a misstatement of law as true and that the tender was therefore impermissibly conditional. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 607, 427 P.3d 113, 118 (2018) ("In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist."). But the challenged portion of the letter stated in relevant part that an HOA's delinquent assessment lien at the time of the proceedings below was junior to first deeds of trust to the extent it was for collection fees and costs, which was a correct general statement of law. *See Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016)

(interpreting the pre-2015 version of NRS 116.3116(2) and concluding that an HOA's superpriority lien "does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure").

Although SFR is correct that certain specific collection costs for maintenance and nuisance abatement may be included in the superpriority portion of an HOA's lien, *see* NRS 116.310312(4) (2009); NRS 116.3116(2)(c) (2011), that does not mean that the tender letter at issue here misstated the law. Collection costs related to maintenance and nuisance abatement are a specific exception to the general rule that collection fees and costs are not part of the HOA's superpriority lien. *See Ikon Holdings*, 132 Nev. at 366 n.5, 373 P.3d at 69 n.5 (recognizing that maintenance and nuisance abatement charges relating to collection constitute a different type of costs than the collection costs for foreclosure addressed elsewhere in the statutory scheme). And because there were no maintenance or nuisance abatement charges included in the HOA's lien in this case, such charges were irrelevant. *Cf. Bank of Am.*, 134 Nev. at 607-08, 427 P.3d at 118 (concluding that a materially similar tender letter was not impermissibly conditional and noting that "the HOA did not indicate that the property had any charges for maintenance or nuisance abatement"). Consequently, BOA's tender letter did not specifically address maintenance and nuisance abatement charges, and it did not—as SFR contends—state that such charges can never be part of an HOA's superpriority lien. We are therefore

not persuaded that the tender letter misstated the law or imposed an impermissible condition.

Accordingly, the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that SFR took the property subject to BOA's deed of trust.[1] *See id.* at 605, 427 P.3d at 116. Given that the sale was void as to the superpriority lien, SFR's argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing.[2] *See id.* at 612, 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 as a matter of law). Thus, we conclude that no genuine issue of material fact exists to

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[1]We reject SFR's argument that BOA was required to prove that it had standing to enforce the underlying loan in order to prevail in this case. Whether BOA had standing to foreclose on the property has no bearing on the validity of its interest in the deed of trust. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 520, 286 P.3d 249, 259 (2012) ("Separation of the note and security deed creates a question of what entity would have authority to foreclose, but does not render either instrument void." (internal quotation marks omitted)).

[2]SFR also argues that it should prevail in equity on grounds of waiver, estoppel, or unclean hands, but it failed to raise those issues in the district court, and they are therefore waived. *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.").

prevent summary judgment in favor of BOA. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Department 8, Eighth Judicial District Court
Kim Gilbert Ebron
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[3]Insofar 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.