

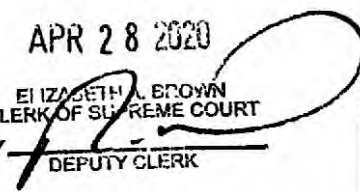
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 5969 HIGH  
STEED,  
Appellant,  
vs.  
THE BANK OF NEW YORK MELLON,  
F/K/A THE BANK OF NEW YORK AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE  
CWMBS REPERFORMING LOAN  
REMIC TRUST CERTIFICATES,  
SERIES 2004-R1,  
Respondent.

No. 78338-COA

**FILED**

APR 28 2020

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Saticoy Bay LLC Series 5969 High Steed (Saticoy Bay) appeals from a district court order granting summary judgment 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 her 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, the predecessor to respondent The Bank of New York Mellon (BNYM)—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 Saticoy Bay purchased the

property. Saticoy Bay initiated the underlying action seeking to quiet title to the property, and BNYM counterclaimed seeking the same. The parties moved for summary judgment, and the district court ruled in BNYM's favor, finding that the tender extinguished the superpriority portion of the HOA's lien such that the property remained subject to BNYM'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.

Here, the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that Saticoy Bay took the property subject to BNYM's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Saticoy Bay's argument that the tender did not extinguish the superpriority lien and instead constituted an assignment of the HOA's superpriority rights to BNYM's predecessor. *See id.* at 609, 427 P.3d at 119 ("Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land."). Further, the conditions that Saticoy Bay challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d] a right to insist."

*Id.* at 607-08, 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). And once BNYM's predecessor tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 609-11, 427 P.3d 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).


Additionally, we reject Saticoy Bay's argument that the tender could not have extinguished the superpriority lien because the HOA's foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot validate an otherwise void sale. *See id.* at 612, 427 P.3d at 121 (“[A]fter a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first deed of trust on the property.”); Restatement (Third) of Prop.: Mortgs. § 6.4(b) & cmt. c (Am. Law Inst. 1997) (indicating 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). Moreover, given that the sale was void as to the superpriority amount, Saticoy Bay's argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See Bank of Am.*, 134 Nev. 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 prevent summary judgment in favor of BNYM. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

cc: Hon. Gloria Sturman, District Judge  
Law Offices of Michael F. Bohn, Ltd.  
Akerman LLP/Las Vegas  
Eighth District Court Clerk

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<sup>1</sup>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.