

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND V, LLC, A DOMESTIC NON-
PROFIT CORPORATION,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 77677-COA

FILED

MAY 27 2020

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

ORDER OF AFFIRMANCE

TRP Fund V, LLC (TRP), appeals from a district court order granting a motion for summary judgment in part in a quiet title action. Eighth Judicial District Court, Clark County; Mark B. Bailus, 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 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 the predecessor to TRP purchased the property. Ultimately, TRP filed the underlying action seeking to quiet title to the property, and BOA counterclaimed seeking the same. BOA moved for summary judgment, which the district court granted in part, finding that the tender extinguished the superpriority portion of the HOA's lien such that TRP 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.


Here, the district court correctly found that the tender of nine months of past due assessments satisfied the superpriority lien such that TRP took the property subject to BOA'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 TRP's argument that BOA failed to prove the superpriority amount of the HOA's lien because it relied on a statement of account from a different property within the same HOA, as that constituted circumstantial evidence of the superpriority amount that TRP failed to rebut.¹ *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment). Likewise, we reject TRP's argument that BOA failed to prove that the tender was actually delivered, as there is circumstantial evidence in the record of delivery—including copies of the tender letter and check, as well as a printout from BOA's counsel's internal

¹We also reject TRP's argument that the superpriority amount may have included maintenance or nuisance abatement charges, as that is mere speculation. *See In re Connell Living Tr.*, 133 Nev. 137, 140, 393 P.3d 1090, 1093 (2017) (recognizing that speculation is insufficient to defeat summary judgment).

filing system reflecting that the tender was delivered and rejected—which TRP failed to rebut. *See id.* Accordingly, we conclude that no genuine issue of material fact exists to prevent summary judgment in favor of BOA, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Department 18, Eighth Judicial District Court
Hong & Hong
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.