

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIM RADECKI, AN INDIVIDUAL,
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. 80274-COA

FILED

FEB 19 2021

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

ORDER OF AFFIRMANCE

Tim Radecki appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Mary Kay Holthus, 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)—the beneficiary of the first deed of trust on the property—tendered payment to the HOA's foreclosure agent for nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which Radecki purchased the property. Radecki then initiated the underlying action against BOA to quiet title to the property, and both parties ultimately moved for summary judgment. The district court ruled in favor of Radecki, concluding that BOA tendered the superpriority amount of the HOA's lien, but that it failed to

take any action thereafter to preserve its deed of trust, thereby rendering Radecki a bona fide purchaser (BFP).

BOA appealed from that decision, and the supreme court transferred the appeal to this court. In light of the supreme court's then-recent opinion in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 427 P.3d 113 (2018), this court reversed and remanded the matter for further proceedings on grounds that Radecki's purported BFP status was irrelevant in light of the tender and that "the district court failed to properly consider the full circumstances regarding [BOA]'s tender in this case, specifically the HOA's grounds for rejecting the tender, which impact genuine issues of material fact in this matter."¹ *Bank of Am., N.A. v. Radecki*, Docket No. 75334-COA (Order of Reversal and Remand, March 18, 2019). On remand, BOA filed a renewed motion for summary judgment, which the district court granted, concluding that BOA's tender preserved the deed of trust and that Radecki took the property subject to it. The district court further concluded that, in light of *Bank of America* and later unpublished orders from the supreme court, the foreclosure agent's subjective good faith in rejecting the tender was irrelevant. 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

¹We note that the supreme court in *Bank of America* rejected the purchaser's argument that the foreclosure agent had a good-faith basis for rejecting the tender and that the tender therefore did not preserve the deed of trust, but it did so on grounds that the purchaser had failed to raise the issue before the district court and that the authorities it cited did not support its position. 134 Nev. at 608, 427 P.3d at 118-19.

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, Radecki contends that the district court violated the law of the case by effectively ignoring this court's previous conclusion that genuine issues of material fact remained concerning the foreclosure agent's reasons for rejecting the tender. Although Radecki's position on this point is understandable, this court's prior decision was premised upon the extent to which *Bank of America* did not definitively resolve whether a foreclosure agent's good faith in rejecting a tender in any way impacted the tender's legal effect. *See* 134 Nev. at 608, 427 P.3d at 118-19. But later unpublished orders from the supreme court concluded that a foreclosure agent's subjective good faith was legally irrelevant, *see, e.g., Paradise Harbor Place Tr. v. Nationstar Mortg., LLC*, Docket No. 76378 (Order of Affirmance, September 12, 2019), a position which the supreme court recently confirmed in a published opinion, *see Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing LLC*, 136 Nev., Adv. Op. 85, 478 P.3d 376, 379 (2020) ("An alleged good-faith basis for rejecting a timely, complete tender is not relevant because, as noted above, the tender itself cures the default 'by operation of law.'" (quoting *Bank of Am.*, 134 Nev. at 610, 427 P.3d at 120)). Accordingly, the district court properly applied the law in determining that the foreclosure agent's good faith was irrelevant.

Radecki's only other argument on appeal is that the district court was still required to consider his purported BFP status in determining

whether BOA's deed of trust survived the sale, but—as set forth in our previous decision in this matter—this argument is plainly foreclosed by *Bank of America*, 134 Nev. at 612, 427 P.3d at 121, and we remain bound by that precedent. *See Hubbard vs. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis “applies *a fortiori* to enjoin lower courts to follow the decision of a higher court”); *cf. People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007) (“The Court of Appeal must follow, and has no authority to overrule, the decisions of [the California Supreme Court].” (alteration in original) (internal quotation marks omitted)).

Based on the foregoing, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
The Wright Law Group
Akerman LLP/Las Vegas
Eighth District Court Clerk