

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,
Appellant,
vs.
THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-OC5 MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2006-OC5,
Respondent.

No. 80489-COA

FILED

APR 23 2021

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

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a final judgment in a quiet title action. Eighth Judicial District Court, Clark County; Stefany Miley, 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, counsel for 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's foreclosure agent in an amount equal to nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale where a predecessor in interest to RH purchased the property.

RH's predecessor then filed the underlying quiet title action against BNYM. During the course of the action, RH acquired the property

and intervened in the proceeding, seeking to quiet title against BYNM, which counterclaimed for the same. BYNM and RH eventually filed competing motions for summary judgment, and the district court found that the tender satisfied the superpriority portion of the HOA's lien such that RH took title to the property subject to BNYM's deed of trust. This appeal followed.

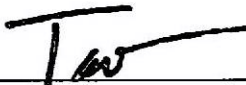
This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving 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 satisfied the HOA's superpriority lien such that RH 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). RH's only argument on appeal is that the letter accompanying the tender check contained impermissible conditions because it supposedly misstated the law regarding maintenance and nuisance-abatement charges and required the HOA to waive its right to collect such charges. But the letter did not address such charges at all, and there is no indication that they were part of the HOA's lien in this case. *Cf. id.* 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”). 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, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 23
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk