IN THE COURT OF APPEALS OF THE STATE OF NEVADA

5316 CLOVER BLOSSOM CT. TRUST,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-OA1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-OA1,
Respondent.

No. 82426-COA

FILED

FEB 04 2022

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

ORDER OF AFFIRMANCE

5316 Clover Blossom Ct. Trust (Clover Blossom) appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Jim Crockett, 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, counsel for the predecessor to respondent, U.S. Bank National Association (U.S. Bank)—holder of the first deed of trust on the property—tendered payment to the HOA's foreclosure agent in an amount exceeding nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, where Clover Blossom purchased the property.

Clover Blossom commenced the underlying quiet title action against U.S. Bank, which eventually filed an amended answer and

counterclaim seeking the same and asserting tender as an affirmative defense. Clover Blossom then filed a motion to dismiss U.S. Bank's counterclaims, and although the district court construed the motion as a motion for summary judgment, it ultimately ruled in favor of Clover Blossom. However, this court reversed and remanded for further proceedings, reasoning that summary judgment was unwarranted because a genuine dispute of material fact remained as to whether U.S. Bank's deed of trust survived the foreclosure sale since it produced evidence showing that it tendered an amount in excess of the superpriority portion of the HOA's lien to its agent prior to the sale. *See U.S. Bank Nat'l Ass'n v. 5316 Clover Blossom Ct. Tr.*, No. 75861-COA, 2019 WL 5260057, at *2 (Nev. Ct. App. Oct. 16, 2019) (Order Affirming in Part, Reversing in Part and Remanding).

On remand, the parties filed competing motions for summary judgment, and the district court ruled in U.S. Bank's favor, concluding that the tender satisfied the HOA's superpriority lien such that Clover Blossom took title to the property subject to U.S. Bank'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 dispute 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 determined that the tender of an amount exceeding nine months of past due assessments satisfied the

HOA's superpriority lien such that Clover Blossom took the property subject to U.S. Bank'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 Clover Blossom's argument that U.S. Bank's assertion of tender was time-barred under various statutes of limitations, as the district court properly concluded that U.S. Bank raised tender as an affirmative defense and that affirmative defenses are not subject to statutes of limitations. *See, e.g., Nev. State Bank v. Jamison Family P'ship*, 106 Nev. 792, 798-99, 801 P.2d 1377, 1381-82 (1990) (applying equitable principles and reasoning that, although the filing of a complaint does not toll the statute of limitations governing a defendant's compulsory counterclaim, the defendant may nevertheless raise the same theory as an affirmative defense); *Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 102, 389 P.2d 394, 396 (1964) ("Limitations do not run against defenses."); *see also City of Saint Paul v. Evans*, 344 F.3d 1029, 1033-34 (9th Cir. 2003) (concluding that statutes of limitations do not apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait until all available defenses are time barred and then pounce on the helpless defendant").

We likewise reject Clover Blossom's argument that U.S. Bank was time-barred from seeking declaratory relief from the conclusive recital of default in the foreclosure deed, as U.S. Bank's affirmative tender defense did not amount to such a request for relief. And although Clover Blossom contends that the tender was impermissibly conditional and that U.S. Bank was required to take further actions to preserve the tender for it to extinguish the superpriority lien, we specifically rejected essentially the same arguments in Docket No. 75861-COA and these arguments are therefore precluded in the present appeal under the law-of-the-case doctrine. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 8, 317 P.3d 814, 818 (2014) (explaining that the law-of-the-case doctrine prohibits reopening

questions that have been previously decided "explicitly or by necessary implication"); *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.").[1]

Finally, to the extent that Clover Blossom argues that it was protected as a bona fide purchaser, and that the district court was required to weigh the equities before it could properly find a valid tender, its arguments are unavailing given that the underlying sale was void as to the superpriority amount of the HOA's lien as a matter of law. *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); *see also Saticoy Bay LLC Series 133 McLaren v. Green Tree*

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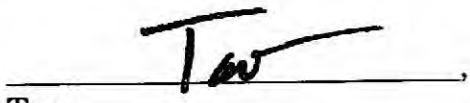
[1]Insofar as Clover Blossom suggests that *Anthony S. Noonan IRA, LLC v. U.S. Bank National Association EE*, 137 Nev., Adv. Op. 15, 485 P.3d 206 (2021), signaled a departure from the supreme court's prior jurisprudence concerning the scope of an HOA's superpriority lien and the circumstances in which a tender will be deemed impermissibly conditional, *see, e.g.*, *Bank of Am.*, 134 Nev. at 606-08, 427 P.3d at 117-8 (stating that "[a] plain reading of [NRS 116.3116(2) (2012)] indicates that the superpriority portion of an HOA lien includes only charges for maintenance and nuisance abatement, and nine months of unpaid assessments," and explaining that a payment-in-full condition does not render a tender impermissibly conditional where the tender is for the full amount of the HOA's superpriority lien), we are unpersuaded. Indeed, *Noonan* simply held that tendering an amount equal to nine months of past due assessments, plus any maintenance and nuisance abatement charges, will satisfy the superpriority portion of an HOA's lien, even when the HOA imposes an annual assessment. 137 Nev., Adv. Op. 15, 485 P.3d at 209. Thus, although the supreme court has recognized that "the doctrine of the law of the case should not apply where, in the interval between two appeals of a case, there has been a change in the law by . . . a judicial ruling entitled to deference," *Hsu v. Cty. of Clark*, 123 Nev. 625, 632, 173 P.3d 724, 730 (2007) (internal quotation marks omitted), that exception does not apply in the present case.

Servicing LLC, 136 Nev., Adv. Op. 85, 478 P.3d 376, 379 (2020) (rejecting an argument that the equities must be weighed before the district court can find a valid tender, reasoning that "a valid tender cures a default '*by operation of law*'—that is, without regard to equitable considerations"). Thus, in light of the foregoing, we conclude that the district court properly granted summary judgment in favor of U.S. Bank. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 8
Eighth Judicial District Court, Department 24
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

[2]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.