IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARKHAM, LLC,
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. 74951-COA

FILED

JAN 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Arkham, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

The original owner of the subject property failed to make periodic payments to its 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. Respondent Bank of America, N.A. tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, and the HOA agent accepted the payment. The HOA then proceeded with its foreclosure sale to collect on its remaining lien.

Arkham's predecessor-in-interest purchased the subject property at the HOA foreclosure sale, and then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The parties then filed cross motions for summary judgment. The district court ruled in favor of Bank

of America, finding that Bank of America's tender extinguished the HOA's superpriority lien. Thus, Arkham took the property subject to Bank of America's first 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 pleading 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.

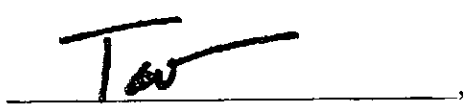
First, we note that Arkham's arguments that a small nuisance or abatement amount was not included in Bank of America's tender and that Bank of America failed to record the satisfaction of the superpriority lien were not raised below, and thus, they have waived these arguments. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."); *see also Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011). Further, we determine that the district court rightfully found that Bank of America's tender of the nine months of past due assessments was effective to extinguish the HOA superpriority lien. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 117-18 (2018). And Arkham's claim that the superpriority amount might have included an additional fifteen dollars is unsupported by the record. *See Horizons at Seven Hills v. Ikon Holdings*,

132 Nev. 362, 373, 373 P.3d 66, 73 (2016) (holding that an HOA superpriority lien is limited to an amount equal to nine months of common expense assessments). Further, the changes in priority caused by Bank of America's tender do not require recording. *See Bank of Am.*, 134 Nev. at ___, 427 P.3d at 119-20.

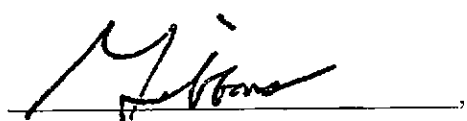
As such, our de novo review concludes that there is no genuine issue of material fact, such that Bank of America was entitled to judgment as a matter of law. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, A.C.J.
Douglas



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Linda Marie Bell, Chief Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk