

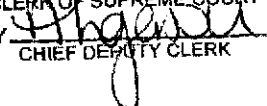
IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,  
Appellant,  
vs.  
RUGGED OAKS INVESTMENTS, LLC,  
Respondent.

No. 68504

**FILED**

SEP 16 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The district court granted summary judgment in favor of respondent on its quiet title/declaratory relief claim and dismissed appellant's quiet title/declaratory relief counterclaim on the ground that appellant lacked standing to challenge whether the HOA's foreclosure sale extinguished appellant's deed of trust.<sup>1</sup> On appeal, respondent tacitly acknowledges that this reasoning was erroneous and instead argues that the district court's judgment can be affirmed because appellant failed to introduce evidence sufficient to create a question of material fact as to whether the HOA sale extinguished appellant's deed of trust. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (recognizing that summary judgment is proper when "no genuine issue as to any material fact remains" (quotation and alteration omitted)). We decline to affirm on this basis, as appellant introduced evidence that it tendered the superpriority lien amount to the HOA, which, when viewed in the light


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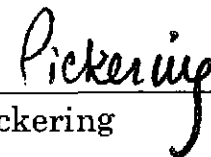
<sup>1</sup>This is the only interpretation of the district court's order that would result in a final, appealable judgment, as the district court's order did not otherwise explain why respondent was entitled to summary judgment on its quiet title/declaratory relief claim.

most favorable to appellant, *see id.*, could be sufficient to establish that the HOA sale did not extinguish its deed of trust.<sup>2</sup> *Cf.* 59 C.J.S. *Mortgages* § 582 (2016) (“It has been held . . . that a good and sufficient tender on the day when payment is due will relieve the property from the lien of the mortgage, except where the refusal [of payment] was . . . grounded on an honest belief that the tender was insufficient.”). We decline to consider whether any other issues would also preclude summary judgment. *Cf.* *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) (“This court is not a fact-finding tribunal . . .”).<sup>3</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
Parraguirre C.J.

  
Hardesty, J.

  
Pickering, J.

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<sup>2</sup>Although respondent contends on appeal that this evidence was inadmissible, it did not make that argument in district court, and we decline to consider the argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

<sup>3</sup>In light of our determination that summary judgment was improper on the parties’ competing quiet title/declaratory relief claims, we conclude that the district court’s NRCP 12(b)(5) dismissal of appellant’s unjust enrichment counterclaim was premature. Specifically, depending on the outcome of the competing quiet title/declaratory relief claims, appellant may be able to establish an unjust enrichment claim.

cc: Hon. Michael Villani, District Judge  
William C. Turner, Settlement Judge  
Akerman LLP/Las Vegas  
Aldrich Law Firm, Ltd.  
Eighth District Court Clerk