

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

4113 KEASBERRY TRUST, A NEVADA  
TRUST; DAVID TOTH; AND SIRWAN  
TOTH, TRUSTEES,  
Appellants,  
vs.  
NATIONSTAR MORTGAGE, LLC, A  
NEVADA FOREIGN LIMITED  
LIABILITY COMPANY,  
Respondent.

No. 76281-COA

**FILED**

OCT 24 2019

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

*ORDER OF AFFIRMANCE*

4113 Keasberry Trust and David and Sirwan Toth appeal from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of lien for, among other things, unpaid assessments 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, the predecessor to Nationstar Mortgage, LLC (Nationstar)—the beneficiary of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in the amount of nine months of past due assessments, which the agent rejected. The HOA proceeded with its foreclosure sale, and 4113 Keasberry Trust (Keasberry) purchased the property. Keasberry and the Toths (collectively referred to herein as Keasberry) then filed the underlying action against Nationstar seeking to quiet title. Both parties later moved for summary judgment, and the district court ruled in

Nationstar's favor, concluding that the tender extinguished the superpriority lien and that the property remained subject to the first deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *See 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.


On appeal, Keasberry argues that the district court erred because Nationstar did not present sufficient evidence that the tender was delivered. However, Keasberry did not dispute delivery below—in fact, it conceded the point—and thus we decline to consider its argument on this issue. *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 . . . is deemed to have been waived and will not be considered on appeal.”). Keasberry also argues that the tender was impermissibly conditional because the letter sent with it contained a misstatement of law. We conclude that the letter accurately stated the law, and we discern no error in the district court's determination that the tender extinguished the HOA's superpriority lien such that Keasberry took the property subject to Nationstar'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). Thus, in light of the foregoing, we conclude that no genuine issue of

material fact existed to prevent summary judgment in favor of Nationstar.  
See *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kerry Louise Earley, District Judge  
Hong & Hong  
Akerman LLP/Las Vegas  
Eighth District Court Clerk