

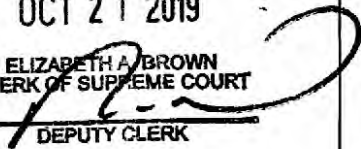
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAL-MOR-USA, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 75224-COA

FILED

OCT 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

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

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of delinquent 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. Respondent Bank of America, N.A., tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, but the agent rejected the payment. The HOA then proceeded with its foreclosure sale.

Appellant Kal-Mor-USA, LLC, later acquired the property from the entity that purchased it at the HOA foreclosure sale. Kal-Mor then filed an action for declaratory relief/quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the property. Bank of America moved for summary judgment, which the district court granted, finding that the HOA did not believe it had a superpriority lien, that it therefore only intended to foreclose on the subpriority portion of its

lien, and that the property was still subject to Bank of America's deed of trust as a result. And as alternate bases for its decision, the district court also found that Bank of America's tender extinguished the superpriority portion of the HOA's lien, that the Federal Foreclosure Bar preempted foreclosure of the superpriority portion of the HOA's lien, and that the foreclosure sale was commercially unreasonable. This appeal followed.

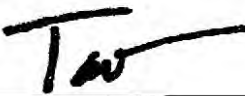
In its opening brief, Kal-Mor extensively challenges the district court's findings with respect to Bank of America's tender, the applicability of the Federal Foreclosure Bar, and the commercial reasonableness of the HOA's foreclosure sale. But in so doing, Kal-Mor failed to address one of the district court's alternate bases for granting Bank of America's motion for summary judgment—that the HOA only intended to foreclose on the subpriority portion of its lien and that the property remained subject to Bank of America's deed of trust as a result. Consequently, Bank of America contends that Kal-Mor waived any challenge to those findings and that we must therefore affirm the district court's decision. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that “[i]ssues not raised in an appellant's opening brief are deemed waived”). We agree.¹ And because Kal-Mor has failed to


¹In light of our resolution of this matter, we do not address whether an HOA's intention to foreclose on only the subpriority portion of a lien is sufficient to make a foreclosure sale a subpriority sale. And regardless of the HOA's intent in the present case, the foreclosure sale was limited to the subpriority portion of the HOA's lien since the Federal Foreclosure Bar preempted NRS 116.3116's superpriority provision and because Bank of America's tender would have extinguished the superpriority portion of the lien. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 272-74, 417 P.3d 363, 367-68 (2018) (addressing the Federal Foreclosure Bar issue); *see also Bank of Am., N.A. v. SFR Invs. Pool*

substantively address the district court's determination that summary judgment should be granted since the HOA only intended to foreclose on the subpriority portion of its lien, we need not address Kal-Mor's arguments regarding the additional bases on which summary judgment was granted below.² Accordingly, we affirm the district court's order granting Bank of America summary judgment.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
William C. Turner, Settlement Judge
Law Offices of Frank W. Mitchell
Law Offices of Raffi A. Nahabedian
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

1, LLC, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (addressing the tender issue).

²Although Kal-Mor asserts in its reply brief that the findings at issue here were not a separate basis for granting Bank of America summary judgment, this assertion is belied by the court's summary judgment order.