

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND IV, LLC, A DOMESTIC
NON-PROFIT CORPORATION,
Appellant,

vs.

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2005-BC5,
Respondent.

No. 76581-COA

FILED

OCT 30 2019

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

ORDER OF AFFIRMANCE

TRP Fund IV, LLC, appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, 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 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. Prior to the sale, the predecessor to Bank of New York Mellon (BNYM)—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 TRP Fund IV, LLC (TRP), purchased the property. TRP then filed the underlying action against BNYM seeking to quiet title, and BNYM counterclaimed seeking the same.

BNYM moved for summary judgment, which the district court granted, 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.

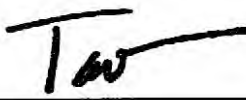
On appeal, TRP argues that the district court erred because BNYM did not present sufficient evidence that the tender was delivered. However, TRP did not dispute delivery below, and thus we decline to consider its argument on this issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). TRP 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 TRP took the property subject to BNYM'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 BNYM. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk