

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND IV, LLC, A DOMESTIC
LIMITED LIABILITY COMPANY,
Appellant/Cross-Respondent,
vs.
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING LP, F/K/A
COUNTRYWIDE HOME LOANS
SERVICING LP, A NATIONAL
BANKING ENTITY,
Respondent/Cross-Appellant.

No. 76077-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.¹ Eighth Judicial District Court, Clark County; Timothy C. Williams, 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, BOA—the beneficiary of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount exceeding nine months of past due assessments, which the agent rejected. The HOA proceeded with its

¹We note that respondent Bank of America, N.A. (BOA), filed a notice of cross appeal from the district court's order based on adverse rulings therein. However, BOA opted not to challenge the district court's order in its briefing, and thus we need only consider this appeal in the context of the appellant's challenges and BOA's proffered grounds for affirmance.

foreclosure sale, and TRP Fund IV, LLC (TRP), purchased the property. TRP then filed the underlying action against BOA seeking to quiet title, and BOA counterclaimed seeking the same. BOA 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 BOA 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 BOA'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 BOA. 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. Timothy C. Williams, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk