

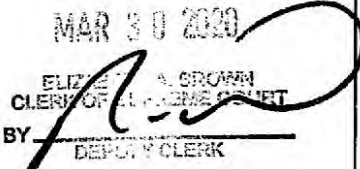
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRONE & IN-CHING, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL ASSOCIATION,
Respondent.

No. 77025-COA

FILED

MAR 30 2020

ELIZABETH A. CROWN
CLERK OF APPEALS COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tyrone & In-Ching, LLC (Tyrone), appeals from a district court order granting a motion for summary judgment, certified as final under NRCPC 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, 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 assessment lien 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, respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for nine months of past due assessments, which the agent accepted. Nevertheless, the HOA proceeded with its foreclosure sale, and Tyrone later acquired the property from the entity that purchased it at the sale.

Tyrone then filed the underlying action to quiet title to the subject property, and BOA counterclaimed for the same. BOA eventually moved for summary judgment, which the district court granted, concluding that the tender extinguished the superpriority portion of the HOA's lien and

that the property therefore 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, Tyrone primarily argues that certain of the documents that BOA produced below to demonstrate that it delivered the tender to the HOA were inadmissible hearsay. But in so doing, Tyrone ignores circumstantial evidence in the record that supports the district court's finding that BOA tendered payment, including a dated letter to the HOA's foreclosure agent regarding the tender and an accompanying check for the superpriority amount. And regardless, Tyrone waived any challenge to the admissibility of BOA's evidence regarding the tender by failing to raise it below. *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.").

As a result, we necessarily conclude the district court correctly determined that BOA tendered an amount equal to nine months of past due assessments, that the tender extinguished the HOA's superpriority lien, and that the foreclosure sale was therefore void as to the superpriority portion of the lien. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134

Nev. 604, 604, 612, 427 P.3d 113, 116, 121 (2018) (“A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default.”). Thus, despite Tyrone’s contentions to the contrary, its purported status as a bona fide purchaser of the property does not protect it from an action to set aside the foreclosure sale. *See id.* at 612, 427 P.3d at 121 (noting that a party’s bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void as a matter of law). Accordingly, we conclude that no genuine issue of material fact remains and affirm the district court’s order granting summary judgment in BOA’s favor. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

¹Given our disposition of this appeal, we need not address the parties’ remaining arguments.