IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND INTERVENOR HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE GSAA HOME EQUITY TRUST 2005-09,
Respondents.

No. 75830-COA

FILED

APR 17 2020

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

ORDER OF AFFIRMANCE

SFR Investments Pool 1, LLC (SFR), appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

The original owner of the subject property failed to make periodic payments to her 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, counsel for Bank of America, N.A. (BOA)—predecessor to the current holder of the first deed of trust on the property, respondent HSBC Bank USA, National Association

(HSBC)[1]—purportedly tendered payment to the HOA foreclosure agent for nine months of past due assessments, which the agent supposedly rejected. The agent proceeded with the foreclosure, and SFR later acquired the property from the purchaser at the sale. Ultimately, HSBC and SFR countersued to quiet title to the property, and both parties moved for summary judgment. The district court ruled in HSBC's favor, finding that the tender extinguished the superpriority portion of the HOA's lien such that SFR took title to the property subject to HSBC's deed of trust. This appeal followed.

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

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[1]We note that BOA assigned its interest in the deed of trust to HSBC, but then recorded another instrument purporting to assign its interest to respondent Nationstar Mortgage, LLC (Nationstar). Although Nationstar initiated the underlying action, HSBC moved to intervene as a plaintiff on grounds that the second assignment was in error and that HSBC was the true beneficiary of the first deed of trust, with Nationstar acting as servicer of the underlying loan. The district court granted HSBC's motion, and SFR does not challenge that decision. Ultimately, because we conclude that the district court correctly determined that the deed of trust survived the foreclosure sale regardless of which entity is the current beneficiary, for purposes of this disposition, we need only assume without deciding that HSBC is the true beneficiary of the deed of trust. Accordingly, we refer to the respondents collectively herein as "HSBC."

and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Here, the district court correctly found that HSBC's predecessor tendered nine months of past due assessments to the HOA and that the tender extinguished the superpriority lien such that SFR took the property subject to HSBC'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). We reject SFR's evidentiary challenges to the affidavit and business records HSBC produced to prove that its predecessor's counsel (Miles Bauer) tendered the full superpriority amount to the HOA foreclosure agent. SFR argues that the evidence—including a ledger from the HOA foreclosure agent that Miles Bauer used to calculate the superpriority amount of the HOA's lien—was hearsay and not properly authenticated, but it failed to raise those issues in any meaningful way before the district court. *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.").

The only challenges SFR raised below were vague assertions (without any citation to authority) that the evidence was self-serving and not credible, that HSBC failed to provide a run slip documenting delivery,[2]

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[2]We acknowledge SFR's notice of supplemental authority citing to the Nevada Supreme Court's unpublished decision in *Bank of America, N.A. v. Las Vegas Rental & Repair, LLC Series 57*, Docket No. 76914 (Order Affirming in Part, Reversing in Part and Remanding, November 15, 2019), for its persuasive value. *See* NRAP 36(c)(3) (noting that parties may cite an unpublished disposition of the supreme court issued after 2015 "for its persuasive value, if any"). Although the court concluded in that case that a genuine issue of material fact remained as to whether a similar tender was

and that the evidence lacked foundation. However, the affidavit, prepared by a managing partner of Miles Bauer, adequately sets forth that the attached records from the law firm—including copies of the tender letter and check, as well as a printout from its internal filing system reflecting that it had delivered the tender to the HOA and that it was returned—comply with the requirements of NRS 51.135.[3] We cannot conclude that the district court abused its discretion in relying on this evidence. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 235-36, 445 P.3d 846, 850-51 (2019) (concluding the district court did not—at the summary judgment stage—abuse its discretion in relying on a similar combination of an employee declaration and accompanying printouts from a database where, as here, the declaration attested that the printouts satisfied the requirements of NRS 51.135, and the foreclosure-sale purchaser failed to demonstrate that those business records were not trustworthy). Accordingly, because SFR failed to rebut Miles Bauer's records with any evidence that they were not trustworthy, we agree with the district court that HSBC was entitled to summary judgment. *See id.*; *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007)

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delivered in light of "the absence of a courier slip in Miles Bauer's file and the absence of any record of delivery in [the HOA foreclosure agent]'s file," *Bank of Am.*, Docket No. 76914, we are not persuaded that we should apply the rationale of the disposition in that matter—with its own distinct record and circumstances—to this case. *See* NRAP 36(c)(2) (providing that, generally, "[a]n unpublished disposition, while publicly available, does not establish mandatory precedent").

[3]We further note that the HOA admitted in its own briefing on summary judgment below—which is not at issue in this appeal—that its agent received and rejected the tender.

(discussing the burdens of production that arise in the context of a motion for summary judgment).

We further reject SFR's alternative contention that the tender at issue here was impermissibly conditional. *See Bank of Am.*, 134 Nev. at 607, 427 P.3d at 118 ("In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist."). SFR argues that the tender letter required the HOA to waive its right to collect maintenance and nuisance abatement charges as part of its superpriority lien, but the letter did not address such charges at all, and there is no indication that such charges were part of the HOA's lien.[4] *Cf. id.* at 607-08, 427 P.3d at 118 (concluding that a materially similar tender letter was not impermissibly conditional and noting that "the HOA did not indicate that the property had any charges for maintenance or nuisance abatement"). Accordingly, such charges are not relevant to this case.

Finally, we reject SFR's remaining arguments that the equities weigh in its favor on grounds of waiver, estoppel, and unclean hands, and that HSBC was required and failed to prove that it had standing to enforce the underlying note in order to prevail in this case. SFR failed to raise the equitable issues before the district court, and they are therefore waived. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. And whether HSBC had standing to enforce the note has no bearing on the validity of its interest in the deed of trust. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 520, 286 P.3d 249, 259 (2012) ("Separation of the note and security deed

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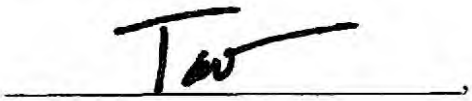
[4]To the extent SFR contends that certain other charges included in the HOA's lien may or may not have been for maintenance or nuisance abatement entitled to superpriority status, that is mere speculation. *See In re Connell Living Tr.*, 133 Nev. 137, 140, 393 P.3d 1090, 1093 (2017) (recognizing that speculation is insufficient to defeat summary judgment).

creates a question of what entity would have authority to foreclose, but does not render either instrument void." (internal quotation marks omitted)).

In light of the foregoing, we conclude that no genuine issue of material fact exists to prevent summary judgment in favor of HSBC. *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. Tierra Danielle Jones, District Judge
Kim Gilbert Ebron
Akerman LLP/Las Vegas
Eighth District Court Clerk