

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EQUITY TRUST COMPANY
CUSTODIAN FBO MELISSA SCALERA
IRA, A NEVADA ENTITY,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

No. 77808-COA

FILED

APR 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

EQUITY TRUST COMPANY
CUSTODIAN FBO MELISSA SCALERA
IRA, A NEVADA ENTITY,
Appellant,
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BANK OF AMERICA, N.A., A
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Respondent.

No. 78007-COA

ORDER OF AFFIRMANCE

Equity Trust Company Custodian FBO Melissa Scalera IRA (ETC) appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The original owners of the subject property failed to make periodic payments to their 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 in an amount exceeding the superpriority portion of the HOA's lien, but the agent rejected the tender and proceeded with its foreclosure sale, at which ETC's predecessor purchased the property. After acquiring the property, ETC filed the underlying action seeking to quiet title, and BOA counterclaimed seeking the same. BOA moved for summary judgment, which the district court granted, finding that the tender extinguished the superpriority portion of the HOA's lien such that the property remained subject to BOA's deed of trust. These appeals followed.¹

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 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 BOA's tender extinguished the superpriority lien such that the property remains 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). We decline to consider ETC's only argument on appeal—that BOA failed to prove that it delivered the

¹We note that ETC filed a notice of appeal from the district court's first order granting BOA's motion for summary judgment (Docket No. 77808) and also from the district court's later amended order doing the same (Docket No. 78007). The supreme court then consolidated the appeals.

tender—as ETC not only failed to contest delivery below, but it explicitly stated in its opposition to BOA’s motion for summary judgment that delivery of the tender and its rejection by the HOA foreclosure agent were “undisputed.” 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.”); cf. *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 159 n.3, 445 P.3d 860, 871 n.3 (Ct. App. 2019) (noting that a party may not complain on appeal of any error he or she induced the court to commit). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk