

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANNY, LLC,
Appellant,
vs.
SELENE FINANCE L.P.,
Respondent.

No. 78445-COA

FILED

APR 28 2020

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

ORDER OF AFFIRMANCE

Danny, LLC (Danny), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, 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 a predecessor to respondent Selene Finance L.P. (Selene)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount equal to the superpriority portion of the HOA's lien, but the agent rejected the tender and proceeded with the foreclosure sale. A predecessor to Danny purchased the property at the foreclosure sale and commenced the underlying quiet title action, and Danny later substituted into the proceeding in place of its predecessor. Meanwhile, Selene acquired the first deed of trust on the property and substituted into the action in place of its predecessor, asserting counterclaims for quiet title and declaratory relief. Selene later moved for summary judgment, which the district court granted,

finding that the tender extinguished the HOA's 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. *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.

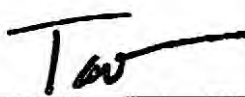
Here, the district court correctly found that the tender extinguished the superpriority lien such that the property remains subject to Selene's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Danny's argument that Selene failed to prove that the tender covered the full superpriority amount of the lien, as Danny failed to raise that issue 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.").

We likewise reject Danny's argument that Selene failed to prove that the tender was delivered. Indeed, Danny neglects circumstantial evidence in the record—including copies of the tender letter and check as well as a printout from the filing system used by counsel for Selene's predecessor—which reflects that the tender was delivered and returned. And Danny fails to argue or point to any evidence demonstrating why these

records were not trustworthy. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 235-36, 445 P.3d 846, 850-51 (2019) (concluding that 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 printout satisfied the requirements of NRS 51.135, and the foreclosure-sale purchaser failed to demonstrate that those business records were not trustworthy). Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kerry Louise Earley, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk