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.,
Respondent.

No. 78221-COA

FILED

MAY 20 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tyrone & In-Ching, LLC (Tyrone), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, 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, 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 nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which the predecessor to Tyrone purchased the property. Ultimately, Tyrone initiated 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 Tyrone took title to the property subject to BOA'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 and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

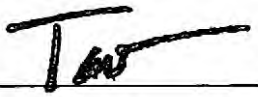
Here, the district court correctly found that BOA's tender of an amount exceeding nine months of past due assessments satisfied the superpriority lien such that Tyrone took the property subject to BOA's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). Tyrone's only argument on appeal with respect to the tender is that the letter accompanying the check contained impermissible conditions because it supposedly misstated the law regarding maintenance or nuisance abatement charges. But Tyrone failed to raise this issue below, and it is therefore waived. *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."). And even if Tyrone preserved the issue, the letter did not address maintenance or nuisance abatement charges at all, and there is no indication that they were part of the HOA's lien in this case. *Cf. Bank of Am.*, 134 Nev. 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").

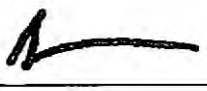
Thus, in light of the foregoing, we conclude that no genuine issue of material fact exists to prevent summary judgment in favor of BOA, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, and we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Kenneth C. Cory, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

[1]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.