

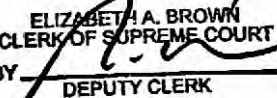
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRONE & IN-CHING, LLC,  
Appellant,  
vs.  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION, NOT IN ITS  
INDIVIDUAL CAPACITY BUT AS  
TRUSTEE OF ARLP SECURITIZATION  
TRUST, SERIES 2014-1,  
Respondent.

No. 77524-COA

**FILED**

JUL 13 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; Kerry Louise Earley, 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, a predecessor to respondent Wilmington Trust, N.A. (Wilmington)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount equal to nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which the HOA purchased the property. Ultimately, Tyrone acquired the property and initiated the underlying action against Wilmington's predecessor seeking to quiet title, and Wilmington's predecessor counterclaimed seeking the same. Wilmington eventually intervened as a defendant and moved for summary judgment, which the district court granted, finding that the

tender satisfied the superpriority portion of the HOA's lien such that Tyrone took title to the property subject to Wilmington'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 the tender of an amount exceeding nine months of past due assessments satisfied the superpriority lien such that Tyrone took the property subject to Wilmington'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. Initially, 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."). But regardless, the letter did not address such 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”). Accordingly, we conclude that no genuine issue of material fact exists to prevent summary judgment in favor of Wilmington, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, and 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  
Wright, Finlay & Zak, LLP/Las Vegas  
Eighth District Court Clerk