

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

CHRISTIANA TRUST, A DIVISION OF
WILMINGTON SAVINGS FUND

SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY BUT AS
TRUSTEE OF ARLP TRUST 3,

Respondent.

No. 78314-COA

FILED

SEP 18 2020

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

ORDER OF AFFIRMANCE

SFR Investments Pool 1, LLC (SFR), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., 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, the original owner made multiple payments to the HOA in an amount exceeding the superpriority portion of the HOA's lien. Nevertheless, the HOA foreclosed on the property and sold it to SFR. Respondent Christiana Trust, which is the beneficiary of the first deed of trust on the property, then filed the underlying action against SFR seeking to quiet title, and SFR counterclaimed for the same. The parties eventually filed competing motions for summary judgment, and

the district court ruled in favor of Christiana Trust, finding that the original owner's payments exceeded the amount of the superpriority portion of the HOA's lien, that the HOA applied the payments to all of the past due assessments, and that the original owner's payments therefore satisfied the superpriority portion of the HOA's lien such that SFR took title to the property subject to Christiana Trust's 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.

On appeal, SFR primarily challenges the district court's determination that the original owner's payments satisfied the superpriority portion of the HOA's lien by arguing that NRS Chapter 116 does not permit such a result.¹ But SFR's argument in this regard fails

¹SFR also contends that payment by the homeowner is an affirmative defense under NRCP 8(c), and that Christiana Trust waived such defense because it did not raise the matter until its opposition to SFR's motion for summary judgment. But even assuming that payment by the homeowner is an affirmative defense, which Christiana Trust disputes, we reject SFR's argument because SFR did not suffer any prejudice due to Christiana

since the supreme court reached the opposite conclusion in *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, which was filed after briefing in this matter was completed. 136 Nev. 76, 79, 459 P.3d 227, 230 (2020) (“While the first deed of trust holder can pay off a superpriority lien default, so, too, can the homeowner.”). And because SFR does not otherwise challenge the district court’s findings that the original owner’s payments exceeded the superpriority amount and were applied by the HOA against all of his past due assessments, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived), it failed to demonstrate that the district court erred by granting summary judgment in favor of Christiana Trust on the ground that SFR took title to the property subject to the first deed of trust. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also Cranesbill*, 136 Nev. at 76, 459 P.3d at 228 (holding that, if an HOA applied a homeowner’s payments to the entire superpriority portion of its lien, then the payments cured the superpriority portion of the underlying default);² *cf. Bank of Am.*,


Trust’s failure to raise this issue earlier—indeed, this issue was heavily litigated below—and fairness dictates that we reach this issue since it is crucial for evaluating the legal effect of the underlying sale. *Cf. Res. Grp., LLC v. Nev. Ass’n Servs., Inc.*, 135 Nev. 48, 53 n.5, 437 P.3d 154, 159 n.5 (2019) (relying on the same rationale to reject an argument that a party waived the issue of tender by failing to raise it in a responsive pleading).

²As the supreme court entered its opinion in *Cranesbill* after briefing in this matter was completed, we would ordinarily reverse and remand for further proceedings in light of *Cranesbill*. But doing so is unnecessary in the present case since the district court already made all of the findings necessary for *Cranesbill* to apply. Moreover, although Christiana Trust

N.A. v. SFR Invs. Pool 1, LLC, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (“[A]fter a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first deed of trust on the property.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Kim Gilbert Ebron
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

filed a notice of supplemental authorities with this court regarding the entry of the opinion in *Cranesbill*, SFR elected not to file any response to direct this court to portions of that decision that it considers pertinent.

³Insofar 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.