

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

6149 RISING CIRCLE TRUST, A
NEVADA TRUST; DAVID TOTH; AND
SIRWAN TOTH, TRUSTEES,
Appellants,


vs.

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS CWALT, INC.
ALTERNATIVE LOAN TRUST 2006-
33CB, MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2006-33CB.
Respondent.

No. 76025-COA

FILED

SEP 20 2019

ELIZABETH J. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

6149 Rising Circle Trust, David Toth, and Sirwan Toth appeal from a district court order granting summary judgment, certified as final under NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of lien for, among other things, unpaid assessments 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 servicer for the predecessor of Bank of New York Mellon (BNYM) tendered payment to the HOA foreclosure agent for nine months of past due assessments, but the HOA rejected the tender and proceeded with its foreclosure sale, where 6149 Rising Circle Trust (Rising Circle) purchased the property. Rising Circle and BNYM then filed counterclaims seeking to quiet title to the property. BNYM later moved for summary judgment,

19-39288

which the district court granted, finding that the tender extinguished the superpriority lien and that the property remained subject to BNYM's first deed of trust. This appeal followed.

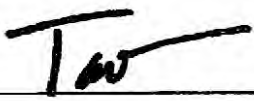
This court reviews a district court's order granting summary judgment de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the 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, Rising Circle argues only that BNYM did not present any competent evidence to the district court showing that the tender was actually delivered to the HOA foreclosure agent, and also that the tender—if it was delivered—was impermissibly conditional. However, the record on appeal reflects that Rising Circle failed to make either of these arguments before the district court. *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.”). Moreover, our review of the record reveals that Rising Circle failed to dispute BNYM's proffered evidence of delivery and stated in its opposition to BNYM's motion for summary judgment that it was undisputed that the HOA foreclosure agent rejected the tender. Finally, the tender letter at issue here contained language virtually identical to language previously approved by the Nevada Supreme Court as an appropriate condition of tender. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134

Nev., Adv. Op. 72, 427 P.3d 113, 116, 118 (2018). Under these circumstances, we cannot conclude that the district court erred in granting the underlying motion for summary judgment. See *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹Insofar 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.