

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHINATOWN STREET TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING, LP, F/K/A
COUNTRYWIDE HOME LOANS
SERVICING, LP,
Respondent.

No. 74545-COA

FILED

DEC 07 2018

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

ORDER OF AFFIRMANCE

Chinatown Street Trust appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

The original owner of the subject property failed to make periodic payments to its 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. Counsel on behalf of respondent Bank of America, N.A. sought to pay off the past due assessments which constituted the superpriority portion of the delinquent assessment lien. The HOA's agent rejected the offer of payment.

Chinatown purchased the subject property at an HOA foreclosure sale. Chinatown then filed an action for injunctive relief and quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The litigation went to a bench trial, after which the district court ruled in favor of Bank of America, finding that the prior tender extinguished the HOA's

superpriority lien and thus, Chinatown took the property subject to Bank of America's first deed of trust. This appeal followed.

Following a bench trial, this court reviews the district court's legal conclusions de novo. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. ___, ___, 426 P.3d 593, 596 (2018). The district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Id.*

In accordance with recent Nevada Supreme Court precedent on the issue of tender in HOA foreclosure procedures, we determine that the district court properly found that Bank of America's tender of the nine months past due assessments was effective to extinguish the HOA superpriority lien. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 117-18 (2018). Thus, "the buyer at foreclosure [takes] the property subject to the deed of trust." *Id.* at ___, 427 P.3d at 116. The condition included with the tender was a condition "on which the tendering party has a right to insist." *Id.* at ___, 427 P.3d at 118. (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount, *i.e.*, nine months of back due assessments, was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust).


Chinatown's arguments challenging Bank of America's tender are unpersuasive. NRS Chapter 116 does not require a cashier's check, nor does it require the tendering party to place the funds with the court or record its claim. *See id.* at ___, 427 P.3d at 120-21. Chinatown's assertions that the HOA acted in good faith in rejecting the tender because it did not include the entire HOA lien amount lack evidence to support this position. As such, the district court's findings that the rejection was improper is not

clearly erroneous. *See Radecki*, 134 Nev. at ___, 426 P.3d at 596. And where the tender extinguished the HOA superpriority lien, making the HOA foreclosure on that interest void, we need not consider Chinatown's bona fide purchaser status. *See Bank of America*, 134 Nev. at ___, 427 P.3d at 121.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹In light of our resolution of this matter, we need not address the parties' remaining arguments.