

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC-SER. 791 CREST  
VALLEY,  
Appellant,  
vs.  
BANK OF AMERICA, N.A.,  
Respondent.

No. 74389-COA

FILED

DEC 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Saticoy Bay LLC-Series 791 Crest Valley appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, 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., tendered payment to the HOA foreclosure agent for an amount equal to nine-months of past due assessments, and the HOA agent accepted the payment. The HOA then proceeded with its foreclosure sale to collect on its remaining lien.

Saticoy Bay purchased the subject property at the HOA foreclosure sale. Saticoy Bay then filed an action for 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 Bank of America's tender extinguished the HOA's superpriority lien, and the HOA agent announced the extinguishment of the superpriority lien at the

foreclosure sale. Thus, Saticoy Bay 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 proceedings, we determine that the district court rightfully found that Bank of America's tender of the nine months of 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.


Saticoy Bay nonetheless argues that, even though it is undisputed that Bank of America paid the superpriority amount of the HOA lien, Bank of America's interest in the subject property should be extinguished because Saticoy Bay was not aware of Bank of America's payment at the HOA foreclosure sale. This argument is based in equity, essentially in support of Saticoy Bay's bona fide purchaser status. But Saticoy Bay's bona fide purchaser status is irrelevant, because any purported sale on the superpriority interest would be void. *See id.* at \_\_\_, 427 P.3d at 121. Where the HOA superpriority lien was satisfied, the later HOA sale could not convey full title to the property. *See id.* ("[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.”).<sup>1</sup> The changes in priority caused by Bank of America’s tender do not require recording. *See id.* at \_\_\_, 427 P.3d at 119-20.

Our de novo review concludes that the district court’s legal conclusions are correct, and there is no reason to disturb the district court’s factual findings. *Radecki*, 134 Nev. at \_\_\_, 426 P.3d at 596. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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<sup>1</sup>Saticoy Bay also argues against a factual finding by the district court that the HOA foreclosure agent did announce the satisfaction of the superpriority lien at the sale. While this factual finding applies to Saticoy Bay’s argument in equity which is inapplicable here, we also note that the district court properly accepted the testimony of the HOA foreclosure agent’s representative and we will not disturb the district court’s findings derived from competing witness testimony. *See Bisch v. Las Vegas Metro. Police Dep’t*, 129 Nev. 328, 342; 302 P.3d 1108, 1118 (2013) (noting it is not within the appellate purview to weigh conflicting evidence or assess witness credibility).

cc: Hon. Mark R. Denton, District Judge  
Law Offices of Michael F. Bohn, Ltd.  
Akerman LLP/Las Vegas  
Eighth District Court Clerk