

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

No. 74473-COA

FILED

MAR 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Premier One Holdings, Inc., appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Joanna Kishner, 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 calculated as nine-months of past due assessments. The HOA agent rejected the payment, and the property went to a foreclosure sale.

Premier One purchased the subject property at the HOA foreclosure sale. Premier One 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. Thus,

Premier One 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 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). And the deed of trust holder is not required to take any further action to preserve its tender for the tender to eliminate the superpriority lien. *See id.* at ___, 427 P.3d at 120.

Where the HOA superpriority lien was satisfied, the later HOA sale could not convey full title to the property. *See id.* at ___, 427 P.3d at 121 (“[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.”). Thus, “the buyer at foreclosure tak[es] the property subject to the deed of trust.” *Id.* at ___, 427 P.3d at 116. Because any purported sale on the superpriority lien would be void following the proper tender, Premier One's bona fide purchaser status is irrelevant. *See id.* at ___, 427 P.3d at 121.

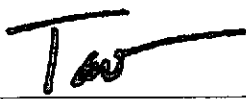
To the extent that Premier One challenges the tender as improper, we note that “[i]n addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a

right to insist.” *Id.* at ___, 427 P.3d at 118. The conditional language that Premier One challenges here is nearly identical to the language at issue in *Bank of America*. And there, the supreme court determined that the tendering party had a right to insist on the terms of the letter accompanying its tender of the amount of nine months of back due HOA assessments. *See id.* (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). Here, again we determine that Bank of America was entitled to assert that it was entitled to the conditions in the letter accompanying the tender. *Id.*

Thus, 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.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk