

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PARADISE HARBOR PLACE TRUST;
AND GOLDSTONE AVENUE TRUST,
Appellants,

vs.

U.S. BANK NATIONAL ASSOCIATION,
AS SUCCESSOR TRUSTEE TO
NATIONSTAR, N.A., AS SUCCESSOR
TO LASALLE BANK, N.A., AS
TRUSTEE FOR THE HOLDERS OF
THE LXS 2005-2 TRUST,
Respondent.

No. 75256-COA

FILED

SEP 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Paradise Harbor Place Trust appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

The original owner of the subject property failed to make periodic payments to her 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 and the HOA's covenants, conditions, and restrictions. Counsel on behalf of a predecessor of U.S. Bank¹ sent a letter to the HOA's agent (NAS) offering to pay any superpriority portion of the

¹It is unclear from the record before this court when the first deed of trust was transferred to U.S. Bank. However, the timing of any transfer(s) does not affect the outcome of this appeal. Consequently, further references to "U.S. Bank" mean U.S. Bank and/or its predecessor(s) in interest.

lien upon proof of what was owed. NAS did not respond to the letter, and the HOA proceeded with a foreclosure sale.

Goldstone Avenue Trust purchased the property at the sale and then sold it to Paradise Harbor. Both entities were managed by Resources Group LLC, which was managed by Iyad Haddad. Haddad was also the sole principal for both Goldstone and Paradise Harbor. Paradise Harbor filed an action for quiet title, asserting that the foreclosure sale extinguished U.S. Bank's first deed of trust encumbering the subject property. After conducting a bench trial, the district court found the HOA foreclosed on only the subpriority portion of the lien, or if it foreclosed on the superpriority portion, the first deed of trust nevertheless survived the foreclosure. Therefore, the district court concluded Paradise Harbor took the property subject to the first deed of trust and granted judgment in favor of U.S. Bank. Of relevance in this appeal are the district court's conclusions that Paradise Harbor made a judicial admission and, as a result, that the HOA foreclosed on only the subpriority portion of the lien.²

Following "a bench trial, this court reviews the district court's legal conclusions de novo." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev., Adv. Op. 74, *4, 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 the district court proceedings, U.S. Bank argued, among other things, that Paradise Harbor's bankruptcy pleadings, filed less than

²Paradise Harbor does not argue that an HOA cannot elect to foreclose on only the subpriority portion of a lien, and the Nevada Supreme Court has not addressed this issue in a published opinion. We therefore assume, without deciding, that the HOA may do so.

three months after the foreclosure sale, constituted a judicial admission that the HOA foreclosed on only the subpriority portion of the lien. The district court found that Paradise Harbor admitted in its bankruptcy pleadings that it had taken the property subject to the first deed of trust. The district court concluded this was a judicial admission and used this as a basis for concluding the HOA foreclosed on only the subpriority portion of the lien. Paradise Harbor argues the district court erred by concluding the HOA foreclosed on only the subpriority portion of the lien. Paradise Harbor challenges the judicial admission conclusion, arguing that it did not admit in the bankruptcy pleadings that the property was taken subject to the first deed of trust, but rather merely acknowledged a potential claim by the holder of the first deed of trust.³

A judicial admission is a “deliberate, clear, unequivocal statement[] by a party about a concrete fact within that party’s knowledge.” *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011). “Judicial admissions . . . have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” 2 McCormick on Evid. § 254 (7th ed.); see *Palmer v. Pioneer Inn Assocs., Ltd.*, 118 Nev. 943, 954 n.31, 59 P.3d 1237, 1244 n.31 (2002) (noting a judicial admission “is conclusively binding”). “What constitutes a judicial admission must be decided under the circumstances

³This argument is Paradise Harbor’s sole basis for challenging the district court’s judicial admission conclusion. Although Paradise Harbor also argues the bankruptcy pleadings did not meet the requirements for judicial estoppel, U.S. Bank did not argue, and the district court did not find, that judicial estoppel applied. We decline to address the judicial estoppel claim. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found.” *Smith v. Pavlovich*, 914 N.E.2d 1258, 1268 (Ill. App. Ct. 2009); *accord Reyburn*, 127 Nev. at 343, 255 P.3d at 276 (“What constitutes a judicial admission should be determined by the circumstances of each case . . .”).

The record before this court indicates that copies of the bankruptcy pleadings were admitted and discussed extensively at trial. Paradise Harbor, however, did not include the bankruptcy exhibits in the joint appendix. “When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Absent the bankruptcy exhibits, we cannot conclude the district court erred by concluding Paradise Harbor’s statements in the bankruptcy pleadings constituted a judicial admission. And, under these circumstances, we conclude Paradise Harbor has failed to demonstrate the district court erred by concluding the HOA foreclosed on only the subpriority portion of the lien.⁴

Paradise Harbor next contends the district court erred when it concluded that Paradise Harbor was not a bona fide purchaser that took the property free and clear of the first deed of trust. A bona fide purchaser is one who takes a property “for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he

⁴Because Paradise Harbor does not argue the point, we take no position on the effect a post-sale judicial admission may have on a sale conducted pursuant to NRS Chapter 116.

failed to make such inquiry.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 64, 366 P.3d 1105, 1115 (2016) (quotation marks omitted). A party asserting bona fide purchaser status bears the burden of establishing that status. *Berge v. Fredericks*, 95 Nev. 183, 187, 591 P.2d 246, 248 (1979). Where circumstances would lead a reasonable person in Paradise Harbor’s position to investigate the existence of prior unrecorded rights, Paradise Harbor had a duty of inquiry to qualify as a bona fide purchaser. *See id.* at 188-89, 591 P.2d at 249.

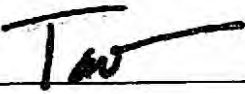
The district court found Haddad, who placed the bid at the foreclosure sale, was “a sophisticated real estate investor with many years of experience bidding for properties at foreclosure auctions” yet he made no attempt to inquire whether this was a foreclosure sale on a superpriority or subpriority portion of a lien. The district court further found that Haddad admitted in subsequent bankruptcy proceedings that the property was purchased subject to the first deed of trust. Under these circumstances, we cannot conclude the district court erred by concluding Paradise Harbor was not a bona fide purchaser.

Finally, Paradise Harbor contends the Restatement (Third) of Property required U.S. Bank to record its claim that the superpriority portion of the lien had been discharged based on its offer to tender, and U.S. Bank’s failure to do so makes the claim void as to Paradise Harbor. Paradise Harbor did not raise this argument below, and we need not consider it on appeal. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. Nevertheless, we note that U.S. Bank did not need to take any action to preserve its superior interest in the property because, as indicated above, the HOA foreclosed on only the subpriority portion of the lien.

For the foregoing reasons, we cannot conclude the district court erred by concluding Paradise Harbor took the property subject to U.S. Bank's first deed of trust. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

⁵Because Paradise Harbor has failed to demonstrate the district court erred by denying relief based on Paradise Harbor's judicial admissions, we do not address the remaining issues raised on appeal.