IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RJRN HOLDINGS, LLC,
Appellant,
vs.
THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LUMINENT MORTGAGE TRUST 2006-1, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-1,
Respondent.

No. 75687-COA

ORDER OF AFFIRMANCE

RJRN Holdings, LLC, appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

The original owners of the subject property failed to make periodic payments to their 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 Bank of New York Mellon (BNYM) allegedly tendered payment to the HOA foreclosure agent for an amount exceeding nine months of past due assessments, but the HOA agent allegedly rejected the payment. The HOA then proceeded with its foreclosure sale.

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RJRN Holdings, LLC (RJRN) later acquired the subject property from the entity that purchased it at the HOA foreclosure sale. It then filed an action seeking, among other relief, to quiet title to the property, asserting that it acquired the property free and clear of BNYM's deed of trust. BNYM counterclaimed, seeking a declaration that its deed of trust survived the foreclosure sale. The matter proceeded to a bench trial, after which the district court concluded that BNYM had tendered the superpriority amount of the HOA's lien to the foreclosure agent, thereby extinguishing the superpriority lien and preserving the deed of trust. This appeal followed.

This court reviews a district court's legal conclusions following a bench trial de novo, but we will not disturb the district court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev., Adv. Op. 74, 426 P.3d 593, 596 (2018).

On appeal, RJRN primarily argues that this court must reverse the district court's judgment because BNYM failed to present sufficient evidence that its servicer actually delivered the tender to the HOA's foreclosure agent. Specifically, RJRN argues that BNYM failed to present testimony from any witnesses who directly observed the purported delivery and that the testimony from the attorney who directed the purported delivery lacked foundation and relied upon inadmissible hearsay. However, RJRN ignores the extent to which the district court properly relied on circumstantial evidence to support its finding that the tender was delivered,

including: testimony from the attorney regarding his law firm's custom of sending tender letters and checks to foreclosure agents on behalf of mortgage loan servicers; testimony from a representative of the foreclosure agent regarding the agent's policy of rejecting those checks; dated copies of the relevant letter and check pertaining to the subject property; and a printout from the attorney's case-management software reflecting that his firm delivered the check to the HOA's agent and that the agent rejected and returned it.[1] *See Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014) (recognizing that facts may be inferred from circumstantial evidence). The district court found this evidence persuasive and concluded that no credible evidence was admitted to refute it. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Accordingly, we reject RJRN's argument on this point.

With respect to RJRN's various other arguments as to why the tender supposedly failed to extinguish the HOA's superpriority lien, we conclude that the district court correctly found that the tender of nine months of past due assessments extinguished the superpriority lien such that the buyer at the foreclosure sale took the property subject to BNYM's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev.,

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[1]We note that RJRN does not argue that this printout constituted hearsay or that it was not properly admitted under the business record exception to the hearsay rule.

Adv. Op. 72, 427 P.3d 113, 116 (2018). The conditions that RJRN challenges in the letter accompanying the tender were "conditions on which the tendering party ha[d] a right to insist." *Id.* at 118 (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount 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). And once BNYM tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 119-21 (rejecting the buyer's arguments that the bank was required to record its tender or take further actions to keep the tender good).

Additionally, we reject RJRN's argument that BNYM's tender could not have extinguished the superpriority lien because the HOA's foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot validate an otherwise void sale. *Cf. id.* 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."). Moreover, given that the sale was void as to the superpriority amount, RJRN's argument that its predecessor was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See id.* (noting that a party's bona fide

purchaser status is irrelevant when a defect in the foreclosure renders the sale void as a matter of law).[2]

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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[2]We decline to address RJRN's argument that BNYM failed to introduce evidence at trial that the loan secured by its deed of trust remained unsatisfied such that the deed of trust constituted a valid interest in the subject property. Whether BNYM could legally foreclose its security interest does not affect our conclusion that the district court properly determined that the tender extinguished the HOA's superpriority lien such that the purchaser at the sale took the property subject to whatever interest BNYM may have.

[3]Insofar 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.

cc: Hon. Joanna Kishner, District Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk