IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT BARRIE, AS TRUSTEE OF THE BARRIE FAMILY TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 76186-COA

FILED

APR 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Barrie appeals from a final 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 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. Prior to the sale, counsel for respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—purportedly tendered payment to the HOA foreclosure agent in an amount exceeding the superpriority portion of the HOA's lien, but the agent allegedly rejected the tender. The agent proceeded to sell the property at the ensuing foreclosure sale to Barrie's predecessor, who then initiated the underlying action to quiet title against BOA. BOA counterclaimed seeking the same, and Barrie was ultimately substituted in his predecessor's place. Following a bench trial, the district court ruled in BOA's favor, finding that it tendered an amount in excess of the superpriority lien to the HOA foreclosure agent prior to the sale and thereby preserved its deed of trust. This appeal followed.

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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. 619, 621, 426 P.3d 593, 596 (2018).

Here, the district court properly found that the tender of nine months of past due assessments was delivered and that it extinguished the superpriority lien such that Barrie took the property subject to BOA's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). Barrie's primary contention on appeal is that BOA failed to prove that its counsel (Miles Bauer) delivered the tender letter and check to the HOA foreclosure agent prior to the foreclosure sale. But in so arguing, Barrie essentially asks this court to reweigh conflicting evidence presented at trial, which we cannot do. *See Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that appellate courts are "not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party"). Because BOA presented circumstantial evidence of delivery—including testimony from an attorney that worked for Miles Bauer and business records from the firm indicating that the tender was delivered to the HOA foreclosure agent the day before the foreclosure sale—we cannot conclude that the district court's findings were clearly erroneous or unsupported by substantial evidence.[1] *See Radecki*, 134 Nev. at 621, 426 P.3d at 596.

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[1]To the extent Barrie argues that the district court failed to apply or misapplied various disputable presumptions under NRS 47.250, we note that both parties arguably enjoyed different presumptions in their favor, and it was the exclusive province of the district court to weigh the parties'

We further reject Barrie's alternative contention that the tender at issue here was impermissibly conditional. *See Bank of Am.*, 134 Nev. at 607, 427 P.3d at 118 ("In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist."). Barrie argues that the tender letter required the HOA to waive its right to collect maintenance and nuisance abatement charges as part of its superpriority lien, but the letter did not address such charges at all, and it is undisputed that the tender in this case exceeded nine months' worth of assessments and any amount included in the lien that may have been for maintenance or nuisance abatement. Accordingly, BOA had a right to insist on preservation of its first deed of trust as a result of the tender. *See id.*

Additionally, we reject Barrie's argument that the 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. *See id.* at 612, 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."); Restatement (Third) of Prop.: Mortgs. § 6.4(b) & cmt. c (Am. Law Inst. 1997) (indicating that a party's reasons for rejecting a tender may be relevant insofar as that party may be liable for

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evidence to determine whether any such presumptions were rebutted. *See Yamaha Motor Co.*, 114 Nev. at 238, 955 P.2d at 664; *see also* NRS 47.180(1) (noting that parties against whom presumptions are directed bear "the burden of proving that the nonexistence of [a] presumed fact is more probable than its existence"). Given the evidence in the record, we cannot conclude the district court abused its discretion on this point. *See Jackson v. Groenendyke*, 132 Nev. 296, 300, 369 P.3d 362, 365 (2016) ("This court reviews a district court's factual findings for an abuse of discretion . . . .").

money damages but that the reason for rejection does not alter the tender's legal effect). Moreover, given that the sale was void as to the superpriority amount, Barrie's argument that his predecessor was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See Bank of Am.*, 134 Nev. at 612, 427 P.3d at 121 (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). Thus, in light of the foregoing, we conclude that the district court properly entered judgment in favor of BOA. *See Radecki*, 134 Nev. at 621, 426 P.3d at 596. Consequently, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
The Dean Legal Group, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

[2]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.