

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

1020 OCEANWOOD TRUST, A
NEVADA TRUST; DAVID TOTH; AND
SIRWAN TOTH, TRUSTEES,
Appellants,

vs.

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE CERTIFICATE
HOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2004-
17CB, MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2004-17CB,
Respondent.

No. 78474-COA

FILED

MAY 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

1020 Oceanwood Trust, David Toth, and Sirwan Toth (collectively referred to as Oceanwood) appeal from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, 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. Prior to the sale, counsel for the servicer for respondent The Bank of New York Mellon (BNYM)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount exceeding nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which Oceanwood purchased the property. Oceanwood initiated the underlying

action to quiet title to the property, and BNYM counterclaimed seeking the same. The matter proceeded to a bench trial, and the district court ruled in BNYM's favor, finding that the tender extinguished the superpriority portion of the HOA's lien such that Oceanwood took title to the property subject to BNYM's 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. 619, 621, 426 P.3d 593, 596 (2018).

Here, the district court correctly found that the tender of nine months of past due assessments satisfied the superpriority lien such that Oceanwood took the property subject to BNYM'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). Oceanwood's only argument on appeal with respect to the tender is that BNYM failed to prove that its servicer's counsel (Miles Bauer) delivered the tender letter and check to the HOA foreclosure agent prior to the foreclosure sale. But in so arguing, Oceanwood 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 BNYM 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—we cannot conclude that the district court's findings were clearly erroneous or

unsupported by substantial evidence. *See Radecki*, 134 Nev. at 621, 426 P.3d at 596. Thus, in light of the foregoing, we conclude that the district court properly entered judgment in favor of BNYM. *See id.* Consequently, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹Insofar 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.