IN THE COURT OF APPEALS OF THE STATE OF NEVADA

S&J INVESTMENTS, LLC,
Appellant,
vs.
HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, SERIES 2006-AR6 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR6,
Respondent.

No. 78509-COA

ORDER OF AFFIRMANCE

S&J Investments, LLC (S&J), appeals from a judgment following a bench trial, certified as final pursuant to NRCP 54(b), in a judicial foreclosure action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

The original owner of the subject property failed to make periodic payments to his 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, the original owner made multiple payments to the HOA in an amount exceeding the superpriority portion of the HOA's lien. Meanwhile, counsel for Bank of America, N.A. (BOA)—then the servicer of the loan now secured by respondent HSBC Bank USA, National Association's (HSBC) first deed of trust—sent a letter to the HOA's foreclosure agent inquiring as to the superpriority amount and offering to pay that sum once determined. The foreclosure agent did not respond to the request, and BOA took no further action. Ultimately, the

HOA foreclosed on the property and sold it to S&J's predecessors, against whom—among others—HSBC later initiated the underlying action for judicial foreclosure. During the course of the action, S&J also sought to quiet title to the property. The matter proceeded to a bench trial, following which the district court entered judgment in favor of HSBC, concluding that the original owner's partial payments satisfied the superpriority portion of the HOA's lien such that S&J took title to the property subject to HSBC's first 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 properly determined that the original homeowner's payments satisfied the superpriority portion of the HOA's lien such that S&J took title to the property subject to HSBC's first deed of trust. *See 9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8, 459 P.3d 227, 230 (2020) ("While the first deed of trust holder can pay off a superpriority lien default, so, too, can the homeowner.");[1] *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) ("[A]fter a valid tender of the superpriority portion of an HOA lien, a

[1]Insofar as S&J asks this court to overrule *Cranesbill*, we cannot overrule Nevada Supreme Court precedent. *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"); *cf. People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of [the California Supreme Court]." (alteration in the original) (internal quotation marks omitted)).

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."). Contrary to S&J's assertions on appeal, substantial evidence in the record supports the district court's extensive factual findings and its ultimate determination that the HOA applied the original homeowner's payments to the superpriority portion of its lien. *See Cranesbill*, 136 Nev., Adv. Op. 8, 459 P.3d at 231 (noting that a creditor may determine how to allocate a partial payment if the debtor does not specifically identify which portion of the debt he or she is intending to satisfy); *see also Radecki*, 134 Nev. at 621, 426 P.3d at 596.

Although it does not explicitly provide as much, the HOA's accounting ledger that was admitted at trial indicates that the HOA applied the payments—which exceeded the superpriority amount of its lien—to the earliest accrued debts, including the pre-notice-of-delinquent-assessment-lien assessments comprising the superpriority component of the HOA's lien. *See* NRS 116.3116(2) (2009) (describing the superpriority component of an HOA's lien as "the assessments for common expenses . . . which would have become due . . . during the 9 months immediately preceding institution of an action to enforce the lien"); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21, 25-26, 388 P.3d 226, 231 (2017) (recognizing that, under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). And S&J fails to identify any evidence to the contrary or otherwise explain why the HOA's ledger does not constitute substantial

evidence supporting the district court's findings.[2] *See Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008) ("Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion."); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument).

Additionally, although the district court determined that the HOA specifically applied the payments to the oldest delinquencies and therefore did not need to conduct its own analysis regarding how to allocate the payments, *see Cranesbill*, 136 Nev., Adv. Op. 8, 459 P.3d at 231 ("If neither the debtor nor the creditor makes a specific application of the payment, then it falls to the court to determine how to apply the payment."), we note that the district court's findings are consistent with the legal preference for applying payments to the earliest matured debts, absent countervailing equitable concerns. *See id.* Accordingly, having discerned

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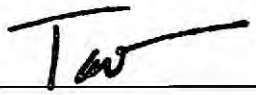
[2]S&J argues that, on the evidence presented below, only the original homeowner's payments predating the notice of delinquent assessment lien could reasonably be understood to have been applied to the superpriority portion of the HOA's lien. But S&J ignores the extent to which the HOA's ledger indicates otherwise. Specifically, and as the district court noted, the ledger shows that the HOA continued to apply the original homeowner's post-notice payments to pre-notice charges (i.e., the charge for preparing the notice of intent to lien) and assessments, and not to any of the numerous late fees that began to accrue following service of the notice of delinquent assessment lien. In weighing the evidence before it, the district court reasonably concluded that the HOA's ledger displayed an intent on the part of the HOA to apply the payments to the earliest incurred charges and assessments, and we will not reweigh that evidence on appeal. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

no error in the district court's decision, *see Radecki*, 134 Nev. at 621, 426 P.3d at 596, we

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

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Rob Bare, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk

[3]In light of our disposition, we need not reach HSBC's alternative argument that its predecessor's obligation to tender was excused as a matter of law. Moreover, we reject S&J's contention that it was a bona fide purchaser, as such status is inapposite when a sale is void as to the superpriority portion of an HOA's lien. *See Cranesbill*, 136 Nev., Adv. Op. 8, 459 P.3d at 232.