IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREFERRED TRUST COMPANY LLC FBO WILLIAM R. TURNER TRADITIONAL IRA 401500028; AND VERNA D. TURNER TRADITIONAL IRA 401500022,
Appellants,
vs.
BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-0A10 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-0A10,
Respondent.

No. 80515-COA

FILED

APR 29 2021

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

ORDER OF AFFIRMANCE

Preferred Trust Company LLC FBO William R. Turner Traditional IRA 401500028 and Verna D. Turner Traditional IRA 401500022 appeal from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). Through its foreclosure agent—Red Rock Financial Services (Red Rock)—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, Bank of America, N.A., as servicer for respondent The Bank of New York Mellon (BNYM)—the beneficiary of the first deed of trust on the property—tendered payment to Red Rock for an amount that BNYM believes exceeded the superpriority portion of the HOA's lien, but Red Rock rejected the tender. The HOA then entered into a factoring agreement with First 100, LLC (First 100), and United Legal Services, Inc. (United), whereby First 100 purchased the receivables for the HOA's lien and United became the HOA's foreclosure agent. In the agreement, the HOA agreed that the opening bid for the property would be set at $99 and that the HOA would not bid any higher than that amount.

United proceeded with foreclosure and sold the property to First 100, which then sold the property to appellants' predecessor in interest. The predecessor then initiated the underlying action seeking to quiet title against BNYM, and the district court later substituted appellants into the action as plaintiffs. The matter proceeded to a bench trial, following which the district court found that BNYM's servicer tendered an amount exceeding the superpriority portion of the HOA's lien to Red Rock, that Red Rock rejected the tender and had previously informed BNYM's servicer's counsel of its policy of rejecting superpriority tenders, that the foreclosure sale price was grossly inadequate, and that the HOA's factoring agreement with First 100 and United was unfairly collusive. Accordingly, the district court concluded that the tender preserved BNYM's deed of trust and, alternatively, that the deed of trust was preserved in equity. 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).

On appeal, appellants contend that the district court miscalculated the superpriority amount of the HOA's lien, which they believe exceeded the amount of the tender. However, we need not address this issue, as the district court specifically found that Red Rock had previously informed BNYM's servicer's counsel of its policy of rejecting superpriority tenders. This known policy of rejection excused BNYM's obligation to tender and preserved the deed of trust as a matter of law. *7510 Perla Del Mar Ave Tr. v. Bank of Am., N.A.*, 136 Nev. 62, 63, 458 P.3d 348, 349 (2020). Although appellants vaguely contend that there is no evidence that Red Rock had a known policy of rejection, the district court's written findings of fact and conclusions of law noted that the testimony of Red Rock's representative supported its finding on this point, and appellants failed to provide a trial transcript in the record on appeal. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). Thus, we presume the trial testimony supported the district court's finding, and we affirm the judgment.

Although we need not address the issue in light of our above noted disposition of this matter, we further note that the district court did

not abuse its discretion in reaching its alternative conclusion that the deed of trust survived in equity. *See Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 55, 437 P.3d 154, 160 (2019) (reviewing a district court's weighing of the equities in an HOA foreclosure matter for an abuse of discretion). In light of the grossly inadequate sale price and the collusive factoring agreement that limited the amount the HOA could bid on the property, the district court appropriately exercised its discretion when it determined that there was at least slight evidence of unfairness in the sale to support preserving the deed of trust in equity. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 741, 405 P.3d 641, 643 (2017) ("[W]here the inadequacy of the price is great, a court may grant relief based on slight evidence of fraud, unfairness, or oppression."). As courts in other unpublished cases involving materially similar agreements between First 100 and an HOA have recognized, when an entity involved in such an agreement purchases the subject property at the foreclosure sale for a grossly inadequate price, there is at least slight evidence of unfair collusion to chill bidding sufficient to support preserving the deed of trust in equity. *See Lahrs Family Tr. v. JPMorgan Chase Bank, N.A.*, Docket No. 74059 (Order of Affirmance, August 27, 2019) (citing *Country Express Stores, Inc. v. Sims*, 943 P.2d 374, 378 (Wash. Ct. App. 1997) (noting that "[t]o establish chilled bidding, the challenger must establish the bidding was actually suppressed, which can sometimes be shown by an inadequate sales price")); *see also Wells Fargo Bank, N.A. v. First 100, LLC*, No. 3:17-cv-00062-MMD-WGC, 2019 WL 919585, at *4 (D. Nev. Feb. 25, 2019); *cf. Golden v. Tomiyasu*, 79 Nev. 503, 516, 387 P.2d 989, 995 (1963) (noting that

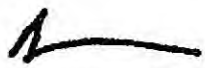
if the sale price was grossly inadequate and the sale was "collusively or in any other manner conducted for the benefit of the purchaser," then "the sale may be set aside" (quoting *Schroeder v. Young*, 161 U.S. 334, 338 (1896))).

Accordingly, the district court correctly determined that BNYM's deed of trust survived the HOA's foreclosure sale, and we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Mark R. Denton, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[1]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.