

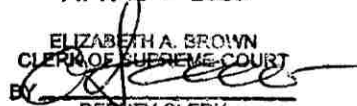
IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., A  
NATIONAL ASSOCIATION,  
Appellant,  
vs.  
TRASHED HOME CORPORATION, A  
NEVADA CORPORATION,  
Respondent.

No. 83655

FILED

APR 21 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL*

This is an appeal from a district court final judgment following a bench trial in an action to quiet title to real property. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). Through its foreclosure agent, Absolute Collection Services, LLC (ACS), 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. The holder of the first deed of trust on the property, appellant Bank of America, N.A. (BOA), responded through its counsel, Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer), by sending a payoff request to ACS prior to the sale.

In response, ACS stated that it would provide a statement of account for the nine-month superpriority lien only upon proof of foreclosure by the bank. It further stated that it would require payment of a specified fee before producing any kind of statement of account. BOA took no further action following ACS's response, and the HOA eventually proceeded with its foreclosure sale, where respondent Trashed Home Corporation (Trashed Home) purchased the property.

Trashed Home then initiated the underlying action seeking quiet title to the property, and BOA counterclaimed seeking the same. The matter proceeded to a bench trial, and the district court ruled in BOA's favor. Trashed Home then appealed. This court reversed and remanded, noting that the district court relied on precedent that had since been vacated. On remand, the district court, applying *7510 Perla Del Mar Ave Trust v. Bank of America, N.A.*, 136 Nev. 62, 458 P.3d 348 (2020), determined ACS did not have a known policy of rejecting tender payments such that tender should have been excused. The district court thus determined that BOA did not have any ongoing rights to the property. BOA now appeals.

This court reviews the district court's factual findings for substantial evidence and the district court's legal conclusions de novo. *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012), *disavowed on other grounds by Tahican, LLC v. Eighth Judicial Dist. Court*, 139 Nev., Adv. Op. 2, 523 P.3d 550, 554 (2023).


First, we agree with the district court that there was not a valid tender by BOA. *Perla*, 136 Nev. at 65-66, 458 P.3d at 350-51 (noting that "Miles Bauer's letter offering to pay the yet-to-be-determined superpriority portion of the HOA lien" was not a valid tender because "a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender."). Despite a lack of valid tender, a tender obligation may still be excused. *Id.* at 66-67, 458 P.3d at 351-52. "[F]ormal tender is excused when evidence shows that the party entitled to payment had a known policy of rejecting such payments." *Id.* at 63, 458 P.3d at 349. Here, we conclude that the evidence presented at trial established that tender was excused.

The evidence at trial established that ACS would not accept checks if accompanied by “paid in full” language. Specifically, the collection manager and owner of ACS, Kelly Mitchell, testified that ACS would not accept payments if the check was accompanied by the language that the obligation was paid in full. Accordingly, we conclude that the district court’s finding was not supported by substantial evidence because ACS had a known policy of rejecting tender payments. *See, e.g., U.S. Bank N.A. v. BDJ Invs., LLC*, No. 2:16-cv-00866-GMN-BNW, 2021 WL 4268430, at \*5-6 (D. Nev. Sept. 17, 2021) (finding that ACS had a policy of rejecting superpriority tenders); *HSBC Bank USA, N.A. v. Green Valley Pecos Homeowners Ass’n*, No. 2:16-CV-242 JCM (EJY), 2021 WL 1080735, at \*4 (D. Nev. Mar. 19, 2021) (finding that ACS rejected tenders that had “paid in full” written on them and the deed of trust survived under *Perla*); *Nationstar Mortg. LLC, Falls at Hidden Canyon Homeowners Ass’n, Inc.*, No. 2:15-cv-0187-RCJ-NJK, 2021 WL 832637, at \*3-4 (D. Nev. Mar. 4, 2021) (concluding that tender would have been futile because ACS would not accept checks labeled “paid in full”).

Because we conclude that ACS had a known policy of rejecting tender payments, formal tender was excused in this case. BOA preserved its interest in the property and Trashed Home purchased the property

subject to BOA's first deed of trust. *See Perla*, 136 Nev. at 67, 458 P.3d at 352. Accordingly, we

ORDER the judgment of the district court REVERSED.

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Susan Johnson, District Judge  
Kristine M. Kuzemka, Settlement Judge  
Akerman LLP/Las Vegas  
Hong & Hong/Las Vegas  
Eighth Judicial District Court Clerk