

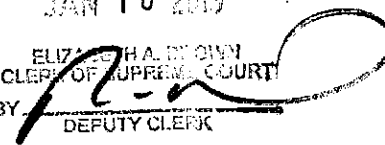
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALENCIA MANAGEMENT LLC
SERIES 1, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOAN SERVICING, LP, F/K/A
COUNTRYWIDE HOME LOANS
SERVICING, LP; AND U.S. BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR SROF-2013-M4 REMIC
TRUST 1,
Respondents.

No. 72946-COA

FILED

JAN 16 2013

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

ORDER OF AFFIRMANCE

Valencia Management LLC Series 1 appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Nancy L. Alf, Judge.

The original owner of the subject property failed to make periodic payments to its 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. Counsel on behalf of respondent Bank of America, N.A. tendered payment to the HOA foreclosure agent for an amount calculated as nine months of past due assessments plus some amount for collection costs. The HOA agent rejected the payment, and the property went to a foreclosure sale.

Valencia purchased the subject property at the HOA foreclosure sale. Valencia then filed an action for quiet title, asserting that the

foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The litigation went to a bench trial, after which the district court ruled in favor of Bank of America, finding that Bank of America's tender extinguished the HOA's superpriority lien, and that the HOA agent was not justified in rejecting the tender. Thus, Valencia took the property subject to Bank of America's first deed of trust. This appeal followed.

Following a bench trial, this court reviews the district court's legal conclusions de novo. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. ___, ___, 426 P.3d 593, 596 (2018). The district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Id.*

In accordance with recent Nevada Supreme Court precedent on the issue of tender in HOA foreclosure procedures, we determine that the district court rightfully found that Bank of America's tender of the nine months past due assessments was effective to extinguish the HOA superpriority lien. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. ___, ___, 427 P.3d 113, 117-18 (2018). And where the HOA superpriority lien was satisfied, the later HOA sale could not convey full title to the property. *See id.* at ___, 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.”). Thus, “the buyer at foreclosure [takes] the property subject to the deed of trust.” *Id.* at ___, 427 P.3d at 116.

Following from this determination, the district court did not err in limiting its consideration of Valencia's arguments in equity at trial. Because any purported sale on the superpriority lien would be void

following the proper tender, Valencia's bona fide purchaser status is irrelevant. *See id.* at ___, 427 P.3d at 121.

To the extent that Valencia challenges the tender as improper, we note that "[i]n addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist." *Id.* at ___, 427 P.3d at 118. The conditional language that Valencia challenges here is nearly identical to the language at issue in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. ___, 427 P.3d 113 (2018). And there, the supreme court determined that the tendering party had a right to insist on the terms of the letter accompanying its tender of the amount of nine months of back due HOA assessments. *See id.* at ___, 427 P.3d at 117-18 (stating that a plain reading of NRS 116.3116 indicates that tender of the superpriority amount, *i.e.*, nine months of back due assessments, was sufficient to satisfy the superpriority lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). Here, again we determine that Bank of America was entitled to assert that it was entitled to the conditions in the letter accompanying the tender. *Id.* at ___, 427 P.3d at 118.


We also determine that the citations proposed by Valencia to support a good-faith rejection of Bank of America's tender by the HOA are not persuasive where the instant record suggests the HOA would only accept full payment of both superpriority and subpriority amounts. *See id.* at ___, 427 P.3d at 118-19. As such, the district court's finding that the HOA was not justified in its rejection of the tender was not clearly erroneous.


Thus, our *de novo* review concludes that the district court's legal conclusions are correct, and there is no reason to disturb the district

court's factual findings. *See Radecki*, 134 Nev. at ___, 426 P.3d at 596.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, A.C.J.
Douglas

 _____, J.
Tao

 _____, J.
Gibbons

cc: Hon. Nancy L. Allf, District Judge
Clark Newberry Law Firm
Akerman LLP/Las Vegas
Eighth District Court Clerk