

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASTLE PINES AVENUE TRUST,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE ON BEHALF OF THE
SARM 2006-9 TRUST FUND,
Respondent.

No. 75346-COA

FILED

AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Castle Pines Avenue Trust appeals from a judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners association (HOA). The HOA recorded a notice of lien for, among other things, unpaid assessments, 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 servicer for U.S. Bank tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, but the HOA agent rejected the payment. The HOA then proceeded with its foreclosure sale and Castle Pines Avenue Trust purchased the property at the foreclosure sale. Castle Pines Avenue Trust later filed an action for quiet title, asserting that the foreclosure sale extinguished U.S. Bank's deed of trust encumbering the property. The litigation went to a bench trial, after which the district court ruled in favor of U.S. Bank, finding that its tender extinguished the

superpriority portion of the lien and that the property was therefore still subject to U.S. Bank's first deed of trust.¹ 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., Adv. Op. 74, *4, 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.*

Castle Pines Avenue Trust argues the district court erred by entering judgment in favor of U.S. Bank. Castle Pines Avenue Trust asserts the district court's ruling was erroneous because U.S. Bank's tender did not extinguish the superpriority portion of the lien, U.S. Bank did not demonstrate it properly tendered the superpriority portion of the lien prior to the foreclosure sale, the HOA had a good-faith basis for rejecting tender, the tender was conditional and not held open, and U.S. Bank improperly failed to record it had submitted tender. However, the record supports the district court's finding that U.S. Bank properly tendered nine months of past due assessments prior to the foreclosure sale, and we determine that

¹The district court also found the foreclosure sale did not extinguish U.S. Bank's deed of trust because NRS 116.1104 and NRS 116.3116(2) were enacted after the recordation of the CC&R's governing the property at issue in this matter and, therefore, those statutes did not permit the HOA to have a superpriority lien on the property. The district court therefore found that the mortgage-savings clause in the CC&R's governing the relevant property caused the HOA's lien to be subordinate to U.S. Bank's first mortgage. However, the district court's finding was erroneous because NRS 116.1206(1) and (2) states that any provisions contained within CC&R's that conflict with NRS Chapter 116 are deemed to conform with NRS Chapter 116 "by operation of law," including CC&Rs that were effective before NRS Chapter 116 was enacted. Nevertheless, because the district court also entered judgment in favor of U.S. Bank on a proper basis, we affirm.

the district court correctly found U.S. Bank's tender extinguished the superpriority portion of the lien, leaving the buyer at the foreclosure sale to take the property subject to U.S. Bank's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool I, LLC*, 134 Nev., Adv. Op. 72, *2, 427 P.3d 113, 116 (2018).

Moreover, Castle Pines Avenue Trust's contention that the HOA rejected the tender in good faith fails. The HOA's subjective good-faith in rejecting the tender is legally irrelevant, as the tender cured the default as to the HOA's superpriority portion of the lien by operation of law. *See id.* at *10, 427 P.3d at 120. Because the superpriority portion of the HOA's lien was no longer in default following the tender, the ensuing foreclosure sale was void as to the superpriority portion of the lien, and HOA's basis for rejecting the tender could not validate an otherwise void sale in that respect. *Id.* at *13, 427 P.3d at 121 ("A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void, as the lien is no longer in default." (quoting 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7.21 (6th ed. 2014))); *see* Restatement (Third) of Prop.: Mortgages § 6.4(b) & cmt. c (Am. Law Inst. 1997) (stating that a party's reason for rejecting a tender may be relevant insofar as that party may be liable for money damages but that the reason for rejection does not alter the tender's legal effect).


Further, the conditions that Castle Pines Avenue Trust challenges in the letter accompanying the tender payment are "conditions on which the tendering party ha[d] a right to insist." *Bank of Am., N.A.*, 134 Nev., Adv. Op. 72, *5-6, 427 P.3d at 118 (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

portion of the lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). And once the tender was made, U.S. Bank was not required to take any further action for the tender to effectively eliminate the superpriority lien. *Cf. id.* at *8-12, 427 P.3d at 119-21 (declining to require deed of trust holder to take actions beyond those specifically required by NRS Chapter 116 to maintain its interest). Moreover, the changes in priority caused by U.S. Bank's tender do not require recording. *See id.* at *8-9, 427 P.3d at 119-120.

Given that the tender of the superpriority portion of the lien rendered any foreclosure on the superpriority portion void, Castle Pines Avenue Trust's argument that it was a bona fide purchaser is unavailing. *See id.* at *13, 427 P.3d at 121 (noting that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void). In light of the foregoing, we conclude the district court properly entered judgment in favor of U.S. Bank. *See Wells Fargo Bank, N.A.*, 134 Nev., Adv. Op. 74, *4, 426 P.3d at 596. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Given our disposition of this appeal, we need not address the parties' arguments as to whether U.S. Bank was entitled to equitable relief.

cc: Hon. Jerry A. Wiese, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk