IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 4456 ACROPOLIS,
Appellant,
vs.
DITECH FINANCIAL LLC, F/K/A GREEN TREE LOAN SERVICING LLC,
Respondent.

No. 79696-COA

FILED

OCT 29 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 4456 Acropolis (Saticoy Bay) appeals from a final 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 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, counsel for the predecessor to respondent Ditech Financial LLC (Ditech)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent for nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which Saticoy Bay purchased the property. Saticoy Bay later filed the underlying quiet title action against Ditech's predecessor, which counterclaimed for the same. Ditech eventually substituted into the action in place of its predecessor, and the matter proceeded to a bench trial. After hearing each party's case in chief, the district court entered judgment on partial findings pursuant to NRCP 52(c),

finding that the tender satisfied the superpriority portion of the HOA's lien such that Saticoy Bay took title to the property subject to Ditech's deed of trust. This appeal followed.

Under NRCP 52(c), if a district court presiding over a bench trial has fully heard a party on an issue and finds against the party on that issue, "the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue." 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 correctly found that the tender of nine months of past due assessments satisfied the superpriority lien such that Saticoy Bay took the property subject to Ditech's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). We reject Saticoy Bay's argument that the tender did not extinguish the superpriority lien and instead constituted an assignment of the HOA's superpriority rights to Ditech's predecessor. *See id.* at 609, 427 P.3d at 119 ("Tendering the superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in land."). Further, the conditions that Saticoy Bay challenges in the letter accompanying the tender are "conditions on which the tendering party ha[d] a right to insist."[1] *Id.* at 607-

[1]We reject Saticoy Bay's argument that the tender letter accompanying the check contained impermissible conditions because it supposedly misstated the law pertaining to maintenance or nuisance abatement charges. The letter did not address such charges at all, and

08, 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 lien and the first deed of trust holder had a legal right to insist on preservation of the first deed of trust). And once Ditech's predecessor tendered, no further actions were required to preserve the tender for it to extinguish the superpriority lien. *See id.* at 609-11, 427 P.3d at 119-21 (rejecting the buyer's arguments that the bank was required to record its tender or take further actions to keep the tender good).

Additionally, we reject Saticoy Bay's argument that the tender could not have extinguished the superpriority lien because the HOA's foreclosure agent had a good-faith basis for rejecting it. The subjective good faith of the foreclosure agent in rejecting a valid tender cannot validate an otherwise void sale. *See id.* at 612, 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."); Restatement (Third) of Prop.: Mortgs. § 6.4(b) & cmt. c (Am. Law Inst. 1997) (indicating that a party's reasons 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). Moreover, given that the sale was void as to the superpriority

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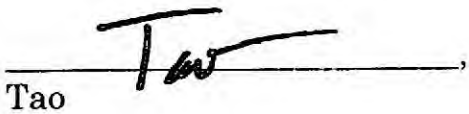
there is no indication that they were part of the HOA's lien in this case. *Cf. id.* at 607-08, 427 P.3d at 118 (concluding that a materially similar tender letter was not impermissibly conditional and noting that "the HOA did not indicate that the property had any charges for maintenance or nuisance abatement").

amount, Saticoy Bay's argument that it was a bona fide purchaser and that the equities therefore warranted eliminating the deed of trust is unavailing. *See Bank of Am.*, 134 Nev. at 612, 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 as a matter of law). Thus, in light of the foregoing, we conclude that the district court properly entered judgment in favor of Ditech, *see Radecki*, 134 Nev. at 621, 426 P.3d at 596, and we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

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

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[2]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.