IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LVDG, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
EMETERIO GARDUNO TREJO, AN INDIVIDUAL,
Respondent.

No. 80290-COA

ORDER OF REVERSAL AND REMAND

LVDG, LLC (LVDG), appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.[1]

In 2011, after respondent Emeterio Garduno Trejo failed to pay past due assessments to his homeowners' association, Sunrise Highlands HOA (the HOA), the HOA foreclosed on Trejo's home pursuant to NRS Chapter 116, acquired title to the property by credit bid in the amount of $3,175.88, and later sold the property to LVDG for $3,000. Trejo then filed suit against LVDG seeking, in relevant part, to quiet title to the property and enjoin LVDG from evicting him. Trejo also asserted a claim for unjust enrichment, contending that LVDG was "unjustly enriched to the detriment of [Trejo] by allegedly purchasing the property for $3,000.00 which [Trejo] believes to be worth approximately $200,000.00," and that Trejo suffered damages as a result. LVDG answered and counterclaimed seeking to quiet title, and the case ultimately proceeded to a bench trial.

[1]Former Eighth Judicial District Court Judge (now Senior Judge) Valorie J. Vega presided over the trial in this matter in 2013, but the final judgment was not entered—"[f]or reasons that are not known," according to LVDG—until 2019, when Judge Hardy entered a written judgment reflecting Judge Vega's oral ruling following trial.

Following trial, the district court ruled in favor of Trejo. The court found that Trejo was current on his mortgage, that he was delinquent on his HOA dues, that the HOA had perfected its lien for delinquent assessments against the property, that the HOA thereafter sold the lien to LVDG, and that LVDG had not been paying taxes on the property. Based on these findings, the court concluded that LVDG had a lien on the property in the amount of $8,282.69 (i.e., the $3,000 purchase price, along with amounts LVDG paid for a sewer bill and ongoing HOA assessments), that LVDG's lien was subordinate to the mortgage, that the quitclaim deed in favor of LVDG should be set aside, and that LVDG would be unjustly enriched by acquiring the property for $3,000, which the court characterized as "roughly two months reasonable rental value, for a home [worth over $200,000]." Accordingly, the district court quieted title in favor of Trejo, granted him injunctive relief preventing eviction, and entered a money judgment in favor of LVDG in the amount of $8,282.69, "which amount shall be secured by [a lien on the property]." 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, LVDG contends that the district court erred by quieting title in favor of Trejo and awarding LVDG a lien rather than quieting title in its favor. Specifically, LVDG contends that the district court fundamentally misunderstood the operation of NRS Chapter 116, that the extent to which Trejo was current on his mortgage was irrelevant in light of his failure to pay his HOA dues, that the HOA acquired title to the property when it foreclosed, that the HOA sold the property—not the foreclosed-upon lien—to LVDG, and that LVDG is therefore entitled to a

judgment quieting title in its favor. LVDG further argues that Trejo was not entitled to relief on his unjust-enrichment claim, as he failed to show that he in any way conferred a benefit on LVDG. And finally, LVDG argues that the district court abused its discretion in essentially granting Trejo equitable relief from the HOA's foreclosure sale, as Trejo failed to produce any evidence that the sale was affected by fraud, unfairness, or oppression. In response, Trejo essentially argues that this court should affirm the district court's judgment because it would be unfair to allow LVDG to take title to the property under the circumstances of this case.

First, we agree with LVDG that the district court's rulings concerning the effect of the HOA's foreclosure sale and its subsequent sale of the property to LVDG were clearly erroneous. *See id.* at 621, 426 P.3d at 596. Because it is undisputed that the HOA complied with all statutory prerequisites to foreclose on its delinquent-assessment lien under NRS Chapter 116, the HOA acquired Trejo's title when it purchased the property by credit bid at the sale.[2] *See* NRS 116.31164(2) (2005) (providing that "the person conducting the sale may sell the unit at public auction to the highest cash bidder" and that "[t]he association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien"); NRS 116.31166(3) (1993) ("The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164

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[2]Although he fails to allege any defects in the HOA's foreclosure sale, Trejo vaguely contends that he was not aware of either the foreclosure sale or the subsequent sale of the property to LVDG until it initiated eviction proceedings. But this contention is without merit, as Trejo confirmed in his testimony at trial that he received the notice of delinquent-assessment lien, the notice of default, and the notice of sale, and he was therefore on notice that his property would be sold if he failed to pay all of his HOA dues. *See Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915) ("Every one is presumed to know the law and this presumption is not even rebuttable.").

vests in the purchaser *the title of the unit's owner* without equity or right of redemption." (emphasis added)); *Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 51, 437 P.3d 154, 158 (2019) ("A foreclosure sale generally terminates a party's legal title to the property."); *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. 740, 746, 405 P.3d 641, 646 (2017) (acknowledging the common-law presumption in favor of the record titleholder and the statutory presumptions that an HOA's foreclosure sale complied with NRS Chapter 116). Accordingly, when the HOA subsequently quitclaimed the property to LVDG, it conveyed title, not a lien. *See Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 298-99, 183 P.3d 895, 901-02 (2008) (discussing the distinction between title and a mere lien right).

Concerning the district court's ruling with respect to unjust enrichment, we agree with LVDG that Trejo has failed to demonstrate how he in any way conferred a benefit on LVDG in such a manner that it would be inequitable for Trejo to not regain title to the property. *See Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) ("Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." (internal quotation marks omitted)).

Although Trejo alludes to the fact that he remained current on his mortgage payments—which included taxes and insurance—and thereby benefitted LVDG by preventing the mortgagee from foreclosing on its deed of trust and stripping LVDG of its title, he fails to explain how title to the property (allegedly worth around $200,000) is in any way commensurate with the value he conferred to LVDG by making mortgage payments from the time LVDG acquired title until the time of trial, a period of

approximately 22 months, at a rate of around $1,500 per month (approximately $33,000). *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). And even assuming Trejo might have had a claim for remuneration in that amount or any other amount in connection with the mortgage payments,[3] he expressly abandoned his claim for damages at the conclusion of trial, and he does not present any argument concerning damages on appeal; instead, he maintains only that he is entitled to the property itself. *See id.*; *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Accordingly, to the extent Trejo relies on his mortgage payments as providing grounds for affirmance or any other relief, we reject his argument.

To the extent the district court essentially granted Trejo equitable relief from the legal effect of the HOA's foreclosure sale and thereby stripped LVDG of its subsequent interest, its ruling amounted to an abuse of discretion. *See Res. Grp.*, 135 Nev. at 55, 437 P.3d at 160 ("A district court's decision to set aside a foreclosure sale on equitable grounds is subject to an abuse of discretion standard of review."). As argued by LVDG, Trejo fails to identify any evidence in the record aside from the low sale price that the HOA's foreclosure sale was itself affected by fraud,

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[3]We question whether Trejo's continued payment of the mortgage—at least to the extent his payments went towards principal and interest on the loan, for which Trejo alone was presumably the obligor—would constitute conferral of a benefit warranting compensation. But in light of our disposition, we need not reach this issue.

unfairness, or oppression. *See id.* at 55, 437 P.3d at 160-61 (recognizing that an inadequate price alone is not enough to set aside an HOA's foreclosure sale in equity and holding that a district court may set aside such a sale only when "the totality of the circumstances demonstrates that *the sale itself* was affected by fraud, unfairness, or oppression" (internal quotation marks omitted)). Instead, Trejo argues only that it would be unfair to allow the foreclosure sale to strip him of title in light of the low sale price, as well as the extent to which he remained current on his mortgage and made partial payments on his delinquency to the HOA. But Trejo's objection on this point is to the operation of the law itself (i.e., NRS Chapter 116), not to any supposed irregularity in the sale process. Ultimately, the HOA lawfully foreclosed in response to Trejo's failure to pay his HOA dues, and there is no basis in the record to support the district court's decision to set the foreclosure sale aside.[4] *See id.* at 56-57, 437 P.3d at 161-62 (concluding that the district court abused its discretion in setting an HOA foreclosure sale aside where there was no evidence of fraud, unfairness, or oppression affecting the sale price, and where it was the foreclosed-upon party's conduct that precipitated the sale).

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[4]Trejo points out that, although the version of NRS 116.31166 in effect at the time of the underlying sale did not provide homeowners with a right of redemption following an HOA's foreclosure sale, the Legislature later revised the statute to provide such a right. *See* NRS 116.31166(3) (2015) (providing homeowners a 60-day redemption period following the sale). In light of this, Trejo argues that the district court's ruling in this matter was essentially a recognition that Trejo should be able to redeem his interest in the property, which the Legislature later agreed with as a policy matter. But his argument on this point is unavailing, as NRS 116.31166 (1993) clearly evinced an intent on the part of the Legislature not to afford a redemption right until the statute was later amended. *See Res. Grp.*, 135 Nev. at 56 n.9, 437 P.3d at 161 n.9 (concluding that "the district court erred by gleaning an intent by the Legislature to provide for a post-sale right of redemption" under the pre-2015 version of the statute).

Finally, we note that the written judgment expressly states that the district court relied heavily upon *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, No. 2:12-CV-00949-KJD-RJJ, 2013 WL 531092 (D. Nev. Feb. 11, 2013), in reaching its decision. In that case, the United States District Court for the District of Nevada dismissed the plaintiff's complaint for quiet title against the beneficiary of the first deed of trust on real property following an HOA's foreclosure sale. *Id.* at *3. The court did so on the mistaken ground that an HOA's foreclosure on its superpriority lien under NRS Chapter 116 does not extinguish a first security interest. *Id.*; *see Diakonos Holdings LLC v. Countrywide Home Loans, Inc.*, 613 F. App'x 652 (9th Cir. 2015) (reversing the district court's decision on grounds that an HOA's foreclosure on its superpriority lien generally extinguishes a first deed of trust (citing *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014))). But as LVDG points out, the district court's decision in *Diakonos* was not only incorrect, but also wholly inapplicable to this case.

Trejo vaguely argues that *Diakonos* is applicable because his mortgage loan, like the loan at issue in that case, is federally backed, which he contends prevented extinguishment of the deed of trust. But whether the deed of trust on the subject property survived the HOA's foreclosure sale is not at all relevant to the question at issue in this case, which is whether Trejo—not his lender—retained a property interest following the sale. Moreover, to the extent the district court in this matter concluded that LVDG's supposed lien—and by extension, the HOA's lien—was subordinate to the deed of trust on the property based solely on the erroneous decision in *Diakonos*, that conclusion was likewise erroneous. And because the beneficiary of the deed of trust was not even a party to this action such that the question of that security interest's continued vitality was not actually

litigated, we take no position on that point and conclude only that LVDG—not Trejo—holds title to the property.

Based on the foregoing, we reverse the district court's judgment quieting title in favor of Trejo, enjoining LVDG from pursuing eviction, and awarding LVDG a money judgment in the form of a lien on the subject property, and we remand for entry of a judgment quieting title to the property in favor of LVDG.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Roger P. Croteau & Associates, Ltd.
Michael J. Harker
Eighth District Court Clerk