IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.; AND THE BANK OF NEW YORK MELLON, F/K/A BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006 J-8, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-J8,
Appellants,
vs.
NV EAGLES, LLC,
Respondent.

No. 84552

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment, certified as final under NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

In a previous appeal, we vacated and remanded the district court's judgment in favor of respondent NV Eagles, LLC. *Bank of Am., N.A. v. NV Eagles, LLC*, No. 81239, 2021 WL 2474202 (Nev. June 16, 2021) (Order Vacating and Remanding). We instructed the district court to consider whether appellants, collectively Bank of America, were excused from tendering the superpriority lien amount in light of their allegation that tendering would have been futile because the party to receive tender had a known policy of rejecting any tender for less than the full lien amount (the futility doctrine). *Id.* at *1. The district court concluded that the futility doctrine did not apply because Bank of America did not rely on the known policy of rejection. Rather, because Bank of America had attempted to tender an insufficient amount without regard for the known policy of rejection, the district court concluded the futility doctrine did not apply:

"The futility [doctrine] has no application where the facts clearly establish that the bank's actions or lack thereof were never influenced by a known policy of rejection and in fact, in the instant case, actions were taken in spite of any policy of [the party to receive tender]." It further stated that it was Bank of America's "burden" to show that the known policy of rejection was the reason it failed to tender, and Bank of America had not met that burden. The district court therefore again entered judgment in favor of NV Eagles. Bank of America now appeals, arguing that the futility doctrine has no reliance requirement and the district court therefore erred in failing to apply it in this case. We agree.

We addressed the futility doctrine in *7510 Perla Del Mar Avenue Trust v. Bank of America, N.A. (Perla Tr.)*, setting out an exception to the general rule "that a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender." 136 Nev. 62, 65, 458 P.3d 348, 350 (2020). That is, where a party "ha[s] a known policy of rejecting any payment for less than the full lien amount, . . . the Bank's obligation to tender the superpriority portion of the lien [is] excused, as it would have been rejected." *Id.* at 66, 458 P.3d at 351. Applying that rule in that case, we concluded that Bank of America established at trial that the party to receive tender had a policy to reject tenders for less than the full lien amount and that Bank of America knew of that policy such that substantial evidence supported applying the futility doctrine. *Id.* at 67, 458 P.3d at 351-52.

Perla Trust does not contain an explicit reliance requirement. Nor does it imply one by basing its application of the futility doctrine in that case on the Bank's reliance on the known policy of rejection. Rather, the only two requirements for the doctrine to apply are as stated in *Perla Trust*:

(1) there is policy of rejecting any tender that is less than the full lien amount and (2) the party to tender knows of that policy. The district court did not address whether these requirements were met, and we therefore reverse the district court's order and remand for the district court to reconsider the futility doctrine's application in light of our decision.

It is so ORDERED.

_____, J.
Cadish

_____, J.
Pickering

_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Department 29, Eighth Judicial District Court
Kristine M. Kuzemka, Settlement Judge
Akerman LLP/Las Vegas
The Wright Law Group, P.C.
Eighth District Court Clerk