IN THE SUPREME COURT OF THE STATE OF NEVADA

7510 PERLA DEL MAR AVE TRUST,

Appellant,

vs.

BANK OF AMERICA, N.A.,

Respondent.

Case No. 75603

APPEAL

from the Eighth Judicial District Court, Clark County, Department XXX
The Honorable Jerry A. Wiese, District Judge
District Court Case No. A-14-703140-C

RESPONDENT'S PETITION FOR SUPREME COURT REVIEW

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

BAC North America Holding Company

Bank of America, N.A.

Bank of America Holding Corporation

Bank of America Corporation

NB Holdings Corporation

Akerman LLP

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

ISSUES PRESENTED

1. Whether the Court of Appeals' ruling conflicts with this Court's holding in *Bank of America, N.A., v. Thomas Jessup, LLC Series VII*, 435 P.3d 1217, 135 Nev., Adv. Op. 7 (2019) ("*Jessup*") and settled law that a lien is cured under the excuse of tender doctrine when:

   (a) an offer to pay the amount is rejected by the offeree;

   (b) a tender of the proper amount would have been futile; or

   (c) a tender is prevented by the creditor's withholding of the amount due.

2. Whether the Court of Appeals committed an error of law concerning a fundamental issue of statewide public importance by holding that Nevada Association Services, Inc.'s (**NAS**) rejection of Respondent Bank of America, N.A.'s (**BANA**) offer to pay the superpriority portion of the homeowner's association's lien did not invoke the excuse-to-tender doctrine.

REASONS FOR REVIEW

This Court should review and vacate the Court of Appeals' order (attached as **Exhibit 1**) reversing the trial court's judgment because it conflicts with this Court's prior decision in *Jessup*. Furthermore, it involves a fundamental issue of statewide public importance, namely, whether the common-law excuse of tender doctrine applies in cases like this one, where the lienholder's effort to tender payment to the

association in satisfaction of the superpriority component of its statutory lien under NRS 116 was thwarted by the association's agent.

In this case, BANA made a written offer to pay the superpriority portion of the association's lien to its trustee NAS. NAS refused to respond to the offer or disclose the superpriority amount. The evidence at trial established that NAS had a policy of refusing to answer BANA's requests for the lien amount and would not accept BANA's superpriority tenders, even when BANA was able to learn the amount. Consequently, the trial court held that the superpriority portion of the association's lien was cured under the excuse of tender doctrine.

The Court of Appeals, however, erroneously reversed the trial ruling. In doing so, it misapplied this Court's ruling in *Jessup* and failed to apply the long-established excuse of tender doctrine. In *Jessup*, this Court held tender excused when BANA's counsel at Miles Bauer had offered to pay the superpriority portion of an association's lien but was told by the association's trustee that it would not provide a statement of account for delinquent assessments until BANA foreclosed. 435 P.3d at 1218. This Court held that when the excuse of tender doctrine applies, the superpriority portion of the association's lien will be cured as effectively as if there had been a formal tender.

This Court should review the Court of Appeals' order and uphold the trial court's ruling under the excuse of tender doctrine. *First*, under authorities cited by

this Court in *Jessup*, the excuse of tender doctrine applies equally to two other situations: where tender would have been futile, and where the party attempting to tender is prevented from doing so by the lienholder's withholding of the amount due. This case fits both situations. *Second*, the facts of this case are materially similar to *Jessup*. The trial evidence shows that NAS's refusal to respond to BANA's offer to pay was a deliberate policy, and that it intended to reject a superpriority if BANA was able to determine the superpriority amount. This amounts to a rejection of BANA's offer to pay. Given the dozens (and perhaps hundreds) of cases where NAS and other trustees' refusal to cooperate thwarted a tender attempt by BANA, this case concerns a fundamental issue of statewide public importance, and is appropriate for this Court's review.

ARGUMENT

I. This Court Should Grant Review Because The Court Of Appeals' Ruling Conflicts With This Court's Decision In *Jessup*.

A. There is no rule that a rejection must be explicit in order to establish the excuse exception to tender.

In *Jessup*, this Court held that a deed of trust holder's obligation to tender was excused after the association's trustee stated that it would not accept a superpriority tender. 435 P.3d at 1220. The Court pointed to several pieces of evidence: a fax sent by the association's trustee stating that it would not provide a statement of account for the delinquent assessments until BANA foreclosed on its first deed of trust;

testimony from the deed of trust holder's attorney that he interpreted the fax as waiving the right to a superpriority lien; and the association's trustee's testimony that it would have rejected that amount. *Id*. at 1220. This Court noted that when a party states its intent to reject a tender, there is "a generally accepted exception" to the obligation to tender. *Id*.

The Court of Appeals denied that tender was excused here based on a fundamental misunderstanding of *Jessup*. The Court of Appeals artificially constrained *Jessup*'s holding as, "[t]o excuse Bank of America's obligation to provide valid tender, HOA must have actually rejected an attempt at tender." *Slip op*. at 3. The Court of Appeals' formulation of the excuse rule is unworkable. A rejected tender is still a tender. *See Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113, 120 (2018) (rejected tender is still effective as long as tendering party remains ready and willing to pay). There is no need for application of the common law excuse doctrine when tender is made and rejected. *See Jessup*, 435 P.3d at 1220 (holding that tender was excused because the association's trustee "stated in its fax that it would reject any such tender ***if*** attempted") (emphasis added).

Nor can the Court of Appeals' decision be reconciled with *Jessup* by interpreting the decision to hold (contrary to its actual language) that the excuse doctrine only applies when the offeree party expressly indicates to the offeror that

any tender will be rejected. Nothing in *Jessup* states that the association (or its trustee) must give an explicit response to a specific offer to pay for the specific property. In fact, the numerous authorities articulating the common law excuse of tender rule followed in *Jessup* state that an intent to reject tender can be inferred from the party's conduct. *See, e.g., Chiles, Heider & Co. v. Pawnee Meadows, Inc.*, 350 N.W.2d 1, 5 (Neb. 1984) ("A formal tender is not necessary where a party **has shown by act** or word that it would not be accepted if made") (emphasis added); *Mark Turner Properties, Inc. v. Evans*, 554 S.E.2d 492, 495 (Ga. 2001) ("tender of an amount due is waived when the party entitled to payment, by declaration **or by conduct**, proclaims that, if tender of the amount due is made, that it will not be accepted.") (emphasis added).

This is for good reason: it would serve no purpose if the excuse of tender doctrine protected a deed of trust when an association trustee decided to explain its rejection, but not when the association's trustee simply threw the holder's offer to pay in the trash and neglected to respond, or when the trustee had previously told the holder that it would not accept a payment of the correct amount. *Jessup* merely recognized a specific rejection of an offer to pay as a sufficient basis for invoking the excuse of tender doctrine. It did not purport to hold that informing the offeror that the tender would be rejected was a necessary condition for tender to be excused.

Thus, neither *Jessup* nor any other authority suggests the illogical restrictions on the excuse doctrine that the Court of Appeals formulated.

B. Excuse of tender applies to this case on other grounds.

The Court of Appeals committed a broader error by reading *Jessup* as somehow excluding other scenarios where the excuse doctrine generally is held to apply. Nothing in *Jessup* supports such an interpretation of the holding. In fact, the authorities cited by this Court in *Jessup* confirm that tender is excused in two other relevant situations. First, tender is excused when it would have been futile—regardless of whether the lienholder tells the offering party that it will reject the tender. Second, tender is excused when the lienholder withholds information on the amount due, and thereby prevents the offeror from learning the amount. The Court of Appeals failed to recognize that this case met both of those categories of excuse, despite the fact that Bank of America addressed them in its answering brief.

1. Tender was excused because it would have been futile.

Excuse applies in the case of futility—*i.e.*, when it is clear that the tender will be rejected if made. The futility of any tender was one of the trial court's grounds for ruling in BANA's favor. (JA1c 212-213). Authorities cited by this Court in *Jessup* agree with the trial court: a tender is excused under the ground of futility when it would have been rejected. 74 AM. JUR. 2D *Tender* § 4 ("Since the law does not require a useless formality, the making of a formal tender that otherwise would be

required is excused where it is reasonably clear that if made, such a tender would be of no avail..."); 86 C.J.S. *Tender* § 5 ("Tender to satisfy an obligation need not be made when the failure to tender is justified or **when the tender would be a vain and idle ceremony**." (emphasis added)); *see also, e.g., Alfrey v. Richardson*, 231 P.2d 363, 368 (Okla. 1951) (tender is waived when "if a strict legal tender had been made, defendant would not have accepted the money"). Under the common law, this is a distinct basis for invoking the excuse doctrine: regardless of whether the offeree expressly indicated it would reject tender, the obligation to tender is held excused if the record shows a tender would have been rejected.

Trial testimony from both Rock Jung and Chris Yergensen established that NAS always rejected the checks sent by Miles Bauer for the full superpriority portion of the lien. (JA2 374:14-18, 383:9-384:4 (Mr. Jung's testimony); JA2 410:3-14 (Mr. Yergensen's testimony). Had Miles Bauer been able to determine the superpriority portion and tender payment, that payment would have been rejected just as in other instances. Accordingly, tender would have been futile in this case and was excused on that basis, as the trial court correctly ruled.

2. NAS's refusal to disclose the amount of the superpriority portion excused tender.

The Court of Appeals also erred by failing to apply the excuse of tender doctrine on the basis of NAS's refusal to disclose the superpriority amount. Nevada has long recognized the broad principle "that any affirmative tender of performance

is excused when performance has in effect been prevented by the other party to the contract." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952). While *Cladianos* was a contracts case, its principle applies equally here. The authorities this Court cited in *Jessup* confirm that excuse of tender applies just as much when the offeree prevents the tendering party from learning the amount due as when the offer is refused. 74 AM. JUR. 2D *Tender* § 4 (tender is excused when "the amount depends on the balance shown by accounts that are inaccessible to the party from whom the tender would otherwise be required … and such information is ascertainable only from the accounts of the creditor, who does not disclose the required information to the debtor[.]"); 86 C.J.S. *Tender* § 5 ("[t]ender of an amount due is therefore waived when the party entitled to payment... in any other way obstructs or prevents a tender"); *Mark Turner Properties, Inc. v. Evans*, 274 Ga. 547, 550, 554 S.E.2d 492, 495 (2001) (tender waived where creditor "refused... to name the amount she claimed to be due her").

BANA's answering brief cited a plethora of cases applying the excuse of tender doctrine. *See, e.g., In re Campbell,* 105 F.2d 197, 200 (9th Cir. 1939) (tender of the specific amount due under a promissory note was excused because of the creditor's "failure to inform the debtor as to the net amount which had accrued under the agreement."); *Spinks v. Jordan*, 66 So. 405, 406 (Miss. 1914) ("it was not necessary for [debtors] to make a tender" in a case where the balance owed "could

only be ascertained from the books of [the lender].") *Barnett v. O'Neal*, 116 So. 2d 375, 377-78 (Ala. 1959) (tender excused when the amount due could not be ascertained by the offering party); *Isaacson v. House*, 119 S.E.2d 113, 703 (Ga. 1961) (tender excused when "defendant refused to divulge the information [about the amount owed] to the plaintiff and thus prevented a tender of the amount due"); *Diamond v. Sandpoint Title Ins., Inc.*, 968 P.2d 240, 246 (Idaho 1998) (holding that creditor's misrepresentation about the amount owed and refusal to provide wiring instructions excused delivery of tender funds); *Kriegel v. Scott*, 439 S.W.2d 445, 448 (Tex. Ct. App. 14th Dist. 1969) (holding tender was excused by creditor's refusal to provide the amount owed; "[a]ppellee could hardly tender payment of a sum whose total could not be determined").

The Court of Appeals failed to address this overwhelming weight of authority presented in BANA's brief. Its decision suggests that it interpreted *Jessup* as recognizing the common law excuse doctrine only in the scenario where the offeree expressly indicates that it would reject a tender. Nothing in *Jessup* actually suggests that this Court adopted that rule; in fact, such a rule would run directly contrary to the well-established common law principles embraced in *Jessup*. There is no logical difference between a payee promising to reject payment in a letter on the one hand, and a payee promising to reject payment through its conduct (i.e., refusing to even answer the request for payment information along with an extensive history of

always rejecting payments) on the other hand. The Court of Appeals applied a distinction without any difference—and without any basis in *Jessup*.

In this case, BANA was prevented from learning the amount due. NAS refused to disclose the amount of the superpriority component of the HOA's lien, even after BANA's request, due to its policy at that time. (JA1b 198; JA2 363:14-25; JA2 412:6-17). Trial testimony confirms that NAS understood that BANA was seeking to discover the superpriority amount. (JA2 400:23-401:16; 407:5-408:4). Therefore, under well-settled law, a tender of the specific amount due was excused because NAS actively prevented BANA from learning the superpriority amount.

II. This Court Should Review Because The Case Involves A Fundamental Issue Of Statewide Importance As To A Silent Rejection Of An Attempt To Tender.

The Court of Appeals denied that tender was excused here on the basis that "[the] HOA at no time actually rejected an attempt to tender the superpriority portion of the lien[.]" *Slip op*. at 3. In reality, the record evidence establishes an "actual rejection" of BANA's tender. The difference between this case and *Jessup* is that in *Jessup*, the association sent a fax to Miles Bauer that explicitly rejected BANA's offer to pay and explained its reasoning. Here, the HOA's trustee simply refused to answer BANA's offer to pay. It did so against a course of conduct of repeatedly rejecting actual payments. This raises a question of statewide public importance:

whether a rejection of an offer to pay can be inferred from a deliberate refusal to respond, coupled with an extensive course of conduct of not accepting payment.

The Court of Appeals erred in holding that NAS did not reject BANA's offer to pay the superpriority portion. NAS's failure to respond to the offer letter was not a mere oversight, but consistent with a policy and practice of refusing to disclose superpriority lien amounts to BANA and other deed of trust holders. The evidence at trial established that at that time, NAS would not respond to any letters from Miles Bauer that offered to pay the superpriority portion. (JA1b 198; JA2 363:14-25).

Furthermore, trial testimony established that NAS would not accept checks from Miles Bauer for the superpriority portion of the lien. Instead, NAS was only willing to accept a payment for the total amount (the superpriority **and** subpriority portions) of an association's lien. Miles Bauer attorney Rock Jung, who handled "close to a thousand" matters involving association liens filed by NAS, testified that NAS would "always reject [the check] unless it was for the full amount [of the total lien.]" (JA2 374:14-18).

Taking this evidence together, it is not plausible to construe NAS's refusal to respond to Miles Bauer's offer letter as anything other than a rejection of the tender offer. As noted above, there is no authority that a rejection must be put in writing to excuse tender. NAS received the letter, had a policy of not responding, and would not have accepted a check from Miles Bauer for the superpriority portion. This fact

pattern differs from *Jessup* only in that NAS's rejection was not put in writing. The Court of Appeals had no reasonable basis to distinguish the cases and deny the excuse of tender doctrine's applicability here. There is no analog to the statute of frauds that would require a tender rejection to be made in writing in order for excuse doctrines to apply.

The issues presented in this case concern a matter of fundamental statewide public importance. First, NAS is a major player in NRS 116 lien enforcement. One attorney alone (Rock Jung) had handled "close to a thousand" matters involving association liens filed by NAS. (JA2 374:14-18). Not only did Mr. Jung testify based on firsthand knowledge that NAS had a consistent policy of rejecting tender offers in numerous cases, but contemporaneously with the time of the offer in this case, NAS was publicly decrying Bank of America's tender attempts as a "scheme," and denying that the association's lien had any superpriority status before the lender conducted its own foreclosure.[1] Thus, this is not a one-off case, but an issue that is also present in other cases working their way through Nevada's courts.

[1] In a September 2012 brief filed in an arbitration proceeding with the Nevada Real Estate Division (**NRED**), Claim No. 12-58, NAS and Leach Johnson Song & Gruchow labeled Bank of America's effort to tender superpriority liens a "scheme ... based entirely on a gross misinterpretation of [NRS 116]." The HOA trustees took the position that superpriority liens only came into existence when a deed of trust was foreclosed upon, and rejected the very possibility the superpriority amount could be paid off before then. NAS joined the Leach Johnson brief in full.

CONCLUSION

The Court of Appeals severely constrained the scope of *Jessup*. This was a mistake because there was no question that NAS excused tender—its refusal to communicate with Miles Bauer spoke volumes, as did its history of rejecting hundreds (if not thousands) of valid payments. Such conduct is just as communicative as the fax sent in *Jessup*. This Court should review and vacate the Court of Appeals' order of reversal and remand. This Court should instead affirm the district court's ruling that the Deed of Trust survived the foreclosure sale on the basis that tender of the superpriority lien was excused.

DATED this 1st day of July, 2019.

AKERMAN LLP

/s/ Darren Brenner

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this petition complies with the page or type-volume limitations of NRAP 40B(d) because it is proportionally spaced, has a typeface of 14 points or more and contains 3,172 words.

FINALLY, I CERTIFY that I have read this **Respondent's Petition For Supreme Court Review**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this opening brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 1st day of July, 2019.

AKERMAN LLP

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CERTIFICATE OF SERVICE

I certify that I electronically filed on the 1st day of July, 2019, the foregoing **RESPONDENT'S PETITION FOR SUPREME COURT REVIEW** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Jill Sallade
An employee of Akerman LLP

EXHIBIT 1

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

7510 PERLA DEL MAR AVE TRUST,
Appellant,
vs.
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No. 75603-COA

FILED

JUN 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

7510 Perla Del Mar Ave 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 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. mailed a letter to the HOA offering to pay the superpriority lien amount once that amount was determined. The HOA did not respond to the letter and Bank of America did not attempt to actually pay the superiority lien amount to the HOA. Later, the property went to a foreclosure sale.

7510 Perla Del Mar Ave Trust (Trust) purchased the subject property at the HOA foreclosure sale. Trust 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 letter offering to pay the superpriority lien was sufficient to constitute a valid tender and therefore extinguished the HOA's superpriority lien. Thus, the district court found Trust 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., Adv. Op. 74, at *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.*

Trust argues the district court erred by finding Bank of America's letter offering to pay the superpriority portion of the HOA's lien, once that amount was determined, was sufficient to constitute a valid tender such that the first deed of trust was not extinguished by the foreclosure sale. We conclude the district court erred. The Nevada Supreme Court has stated "it is the generally accepted 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." *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev., Adv. Op. 7, at *6, 435 P.3d 1217, 1219 (2019).[1] Therefore, Bank of America's "offer to pay the yet-to-be-determined superpriority amount was not sufficient to constitute a valid tender." *Id.* at * 7, 435 P.3d at 1220.

Moreover, the district court erred by finding Bank was excused from its obligation to tender the superpriority amount because any attempt at tender would have been futile as HOA would have rejected the payment.

[1]We recognize the district court did not have the benefit of this decision when it entered its order resolving this matter.

To excuse Bank of America's obligation to provide valid tender, HOA must have actually rejected an attempt at tender. *Cf. id.* at * 7-8 (explaining the HOA's letter informing the bank that it would not accept the tender offered by the bank excused the bank's obligation to tender the superpriority portion of the lien). At trial, Bank of America's former counsel testified that HOA did not respond to the offer-to-pay letter, he considered HOA's non-response to the offer-to-pay letter to be a rejected tender attempt, and Bank of America did not otherwise attempt to tender the superpriority portion of the lien. Because Bank of America did not actually attempt to tender the superpriority portion of the lien and HOA at no time actually rejected an attempt to tender the superpriority portion of the lien, Bank of America's obligation to tender that amount was not excused if it wished to preserve its first deed of trust.

Because Bank of America's offer-to-pay letter indicating its willingness to pay a yet-to-be-determined amount was not valid tender and Bank of America's obligation to pay the superpriority portion of the lien in order to preserve its first deed of trust was not excused, the district court erred by finding Bank of America had preserved its first deed of trust.[2] *Cf.*

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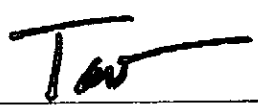
[2]Bank of America also argued it was entitled to equitable relief because the sale was not commercially reasonable. Bank of America contended the sales price was improperly low and the HOA's failure to respond to its offer-to-pay letter amounted to unfairness or oppression. The district court denied this claim and found the sales price was not affected by fraud, unfairness, or oppression. *See Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev., Adv. Op. 91, 405 P.3d 641, 643 (2017) (observing that there must be "'some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price'" (quoting *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. 49, 58, 366 P.3d 1105, 1111 (2016))). The record supports the district court's

SFR Invs. Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. 742, 758, 334 P.3d 408, 419 (2014) (observing that an HOA's proper foreclosure of its superpriority lien extinguishes a deed of trust). Therefore, we conclude the basis for the district court's judgment was erroneous.[3] In light of the foregoing analysis, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings regarding the status of the superpriority lien and the first deed of trust in light of Bank of America's failure to make a valid tender.

_____, 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
Eighth District Court Clerk

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findings in this regard. Therefore, the district court did not err by rejecting this claim.

[3]Based on our conclusion that Trust is entitled to relief due to the previously addressed issues, we do not address the remaining issues raised on appeal.