IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GYONGYI BICSAK,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE CERTIFICATE HOLDERS OF HARBORVIEW MORTGAGE LOAN TRUST 2005-3, LOAN PASS-THROUGH CERTIFICATES, SERIES 2005-3, A/K/A U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF HABORVIEW 2005-3 TRUST FUND,
Respondent.

No. 69838

FILED

APR 17 2017

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

ORDER OF AFFIRMANCE

Appellant Gyongyi Bicsak appeals from a district court summary judgment in a judicial foreclosure action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

On appeal, Bicsak first argues summary judgment was improper because there was a genuine issue of material fact as to whether respondent U.S. Bank National Association was entitled to foreclose on the property insofar as there was evidence that the note was physically held by the Bank of New York Mellon, rather than by U.S. Bank. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (setting forth the standard for summary judgment). The evidence, however, showed that, although the note was physically located at the Bank of New York Mellon, it was held there by U.S. Bank's servicer as U.S. Bank's agent, and thus, the district court correctly concluded that U.S. Bank had legal possession of the note for the purpose of establishing

authority to foreclose.[1] *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 523-24, 286 P.3d 249, 261-62 (2012) (explaining that, under Article 3 of the Uniform Commercial Code, when an agent of a secured party is in physical possession of a note, the secured party is deemed to be in actual possession of the note).

In the remainder of her appellate brief, Bicsak contends that there was a genuine issue of fact with regard to whether U.S. Bank had the right to enforce the deed of trust in light of an assignment of the deed of trust from non-party Bank of America, N.A., to non-party Nationstar Mortgage, LLC, that was recorded in October 2013. But the chain of title in evidence demonstrated that the Mortgage Electronic Registrations

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[1]Bicsak also contends there were questions relating to U.S. Bank's ability to enforce the note because it produced two different versions of the note during discovery, one which was not endorsed and one which was endorsed. Bicsak asserts that she raised this issue in the district court, but the pages of the appendix she identifies as containing this argument make no reference to the existence of two different versions of the note. And while she did mention that a copy of the note produced during discovery did not have an endorsement at a hearing in the district court, she did not develop any argument on this point. Thus, we conclude that she waived this argument. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.3d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). But even if she had not waived this argument, Bicsak's appendix does not include any copy of the note without an endorsement. As a result, we conclude that she has failed to provide a complete record on this issue, and we presume that the missing portion of the record supports the district court's conclusion that there were no issues of material fact with regard to whether U.S. Bank was the holder of the note. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that "appellants are responsible for making an adequate appellate record," and that when an appendix fails to include a portion of the record necessary to determine an issue raised on appeal, the appellate court will "necessarily presume that the missing portion supports the district court's decision").

Systems, Inc. (MERS) was the original beneficiary on the deed of trust and that MERS assigned the deed of trust to U.S. Bank in October 2005. And no evidence was presented that U.S. Bank ever assigned its interest in the deed of trust to any other party or that Bank of America ever had an interest in the deed of trust.[2] As Bank of America did not have an interest in the deed of trust, the district court did not err by concluding that the assignment purporting to transfer the deed of trust from Bank of America to Nationstar did not create a genuine issue of material fact with regard to U.S. Bank's authority to enforce the deed of trust.[3] *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Thus, as Bicsak did not demonstrate any genuine issue of fact with regard to whether U.S. Bank was authorized, as a matter of law, to foreclose, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Silver

_____, J.
Gibbons

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[2]Although Bank of America acted as a servicer for the loan, evidence in the record showed that it was no longer the servicer in October 2013, when the purported assignment was recorded. And regardless, there was no evidence that, as a servicer, Bank of America ever had an interest in the deed of trust itself or the authority to assign an interest in the deed of trust under its own name.

[3]Likewise, a request for notice recorded by Nationstar while it was the servicer of the loan also did not create an issue of fact on this point.

[4]The Honorable Jerome Tao, Judge, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Eric Johnson, District Judge
Eleissa C. Lavelle, Settlement Judge
Harper Selim
Holland & Hart LLP/Las Vegas
Eighth District Court Clerk