IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JPMORGAN CHASE BANK, N.A.,
Appellant,
vs.
TRP FUND VI, LLC,
Respondent.

No. 76996-COA

ORDER OF REVERSAL AND REMAND

JPMorgan Chase Bank, N.A. (JPMorgan), appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

The original owners of the subject property failed to make periodic payments to their 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. The purchaser at the resulting foreclosure sale filed the underlying action seeking, among other things, to quiet title. The beneficiary of the first deed of trust on the property—appellant JPMorgan Chase Bank, N.A. (JPMorgan)—filed an answer asserting 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) as an affirmative defense, as well as counterclaims to quiet title and for unjust enrichment. During the litigation, respondent TRP Fund VI, LLC (TRP), acquired the property and was substituted in its predecessor's place.

Following a bench trial, the district court found that "[t]here was no competent evidence that Federal National Mortgage Association ('Fannie Mae') owned the underlying loan for the Subject Property, and the publicly recorded documents were more competent than Fannie Mae's

20-03445

internal records." Accordingly, the district court concluded that JPMorgan failed to prove that Fannie Mae had any ownership interest in the property that would implicate the Federal Foreclosure Bar, and it quieted title in favor of TRP. It also rejected JPMorgan's counterclaim for unjust enrichment and denied TRP's unjust enrichment claim as moot. 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).

At the time of the district court's ruling, it did not have the benefit of recent precedent from the Supreme Court of Nevada resolving the issues at the heart of this case. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev., Adv. Op. 30, 445 P.3d 846, 849 (2019) (holding that a deed of trust need not be assigned to a regulated entity like Fannie Mae in order for it to own the secured loan—meaning that Nevada's recording statutes are not implicated—where the deed of trust beneficiary is an agent of the note holder). Under that decision, the evidence produced by JPMorgan at trial—including testimony and business records from both JPMorgan and Fannie Mae—was sufficient to prove Fannie Mae's ownership of the note and the agency relationship between Fannie Mae and JPMorgan in the absence of contrary evidence. *See id.* at 849-51 (affirming on similar evidence and concluding that neither the loan servicing agreement nor the original promissory note must be produced for the Federal Foreclosure Bar to apply). Given Fannie Mae's ownership of the note, the Federal Foreclosure Bar prevented extinguishment of JPMorgan's deed of trust, and TRP took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018)

(holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent).

Based on the foregoing, we reverse the judgment of the district court and remand this matter for entry of judgment in favor of JPMorgan on the quiet title claims. *See Pink v. Busch*, 100 Nev. 684, 691, 691 P.2d 456, 461 (1984) ("[U]pon reversal, where the material facts have been fully developed at trial and are undisputed such that the issues remaining are legal rather than factual, we will . . . remand the case to the lower court with directions to enter judgment in accordance with [our order].").

It is so ORDERED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[1]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. Moreover, because neither of the parties challenge the district court's decision with respect to the unjust enrichment claims, any such challenges are waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

cc: Hon. Joseph Hardy, Jr., District Judge
Smith Larsen & Wixom
Hong & Hong
Fennemore Craig P.C./Reno
Eighth District Court Clerk