IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND IV, LLC, A DOMESTIC NON-PROFIT CORPORATION,
Appellant,
vs.
OCWEN LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 77012-COA

ORDER OF AFFIRMANCE

TRP Fund IV, LLC (TRP), appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

The original owner of the subject property failed to make periodic payments to his 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 HOA then sold the property to TRP at the ensuing foreclosure sale. TRP filed the underlying action seeking to quiet title against respondent Ocwen Loan Servicing, LLC (Ocwen)—the beneficiary of the first deed of trust on the property—and Ocwen counterclaimed seeking the same. Ocwen moved for summary judgment, which the district court granted, concluding that the Federal National Mortgage Association (Fannie Mae) owned the underlying loan such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) preserved the deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d

1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

A review of the record from the underlying proceeding reveals that no genuine issue of material fact exists and that Ocwen was entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. The testimony and business records produced by Ocwen, including the authorizations in the Fannie Mae Servicing Guide generally applicable to Fannie Mae's loan servicers, were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between Fannie Mae and Ocwen in the absence of contrary evidence.[1] *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev., Adv. Op. 30, 445 P.3d 846, 849-51 (2019) (affirming on similar evidence and concluding that neither the loan servicing agreement nor the original

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[1]TRP contends that Fannie Mae did not own the loan because the deed of trust assignment from Ocwen's predecessor to Ocwen also purported to transfer the promissory note. However, the supreme court recognized in *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev., Adv. Op. 30, 445 P.3d 846, 849 n.3 (2019), that Freddie Mac (or in this case Fannie Mae) obtains its interest in a loan by virtue of the promissory note being negotiated to it. Section A2-1-04 of the Fannie Mae Servicing Guide, of which we take judicial notice, NRS 47.130; NRS 47.170, stands for the same proposition. Consequently, because the promissory note had already been negotiated to Fannie Mae at the time of the assignment of the deed of trust to Ocwen, Ocwen's predecessor lacked authority to transfer the note, and the language in the assignment purporting to do so had no effect. *See* 6A C.J.S. Assignments § 111 (2019) ("An assignee stands in the shoes of the assignor and ordinarily obtains only the rights possessed by the assignor at the time of the assignment, and no more.").

promissory note must be produced for the Federal Foreclosure Bar to apply). Moreover, we reject TRP's argument that Fannie Mae was required to record its interest in order to avail itself of the Federal Foreclosure Bar. *See id.* at 849 (holding that a deed of trust need not be assigned to a regulated entity 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). Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of the deed of trust and that 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). Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk