IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BDJ INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JPMORGAN CHASE BANK, N.A.,
Respondent.

No. 77024-COA

ORDER OF AFFIRMANCE

BDJ Investments, LLC (BDJ), appeals from a district court order granting summary judgment 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. BDJ acquired the property from the entity that purchased it at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent JPMorgan Chase Bank, N.A. (Chase)—the beneficiary of the first deed of trust on the property—which counterclaimed seeking the same. The parties later filed competing motions for summary judgment, and the district court ruled in favor of Chase, finding that the Federal Home Loan Mortgage Corporation (Freddie Mac) owned the underlying loan such that 12 U.S.C. § 4617(j)(3) (the

Federal Foreclosure Bar) prevented the foreclosure sale from extinguishing Chase's 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 Chase is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject BDJ's arguments that Freddie Mac was required to be the beneficiary of the deed of trust or otherwise record its interest in order to avail itself of the Federal Foreclosure Bar. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019) (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). Moreover, because Freddie Mac need not record its interest, BDJ's purported bona fide purchaser status is inapposite. *See id.* at 234, 445 P.3d at 849. Finally, we conclude that the testimony and business records produced by Chase were sufficient to prove its ownership of the note and its agency relationship with

Freddie Mac in the absence of contrary evidence.[1] *See id.* at 234-36, 445 P.3d 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).

Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Chase's deed of trust and that BDJ 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).[2] Thus, given the foregoing, we

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[1]We reject BDJ's argument that Chase was required under the statute of frauds to produce a written instrument evidencing Freddie Mac's acquisition of the loan, as BDJ was not a party to that transaction and therefore lacks standing to invoke the statute of frauds. *See Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628 (1963) ("The defense of the statute of frauds is personal, and available only to the contracting parties or their successors in interest.").

[2]Because the Federal Foreclosure Bar protects a regulated entity's property from foreclosure "unless or until [the FHFA] affirmatively relinquishes [such protection]," we reject BDJ's argument that Chase bore the burden of showing that the FHFA did not consent to extinguishment of the deed of trust. *Christine View*, 134 Nev. at 274, 417 P.3d at 368 (first alteration in original) (internal quotation marks omitted). We also reject BDJ's argument that the Federal Foreclosure Bar violates due process, as purchasers at HOA foreclosure sales do not have a constitutionally protected property interest in obtaining a property free and clear of a first

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Christopher V. Yergensen
Roger P. Croteau & Associates, Ltd.
Smith Larsen & Wixom
Fennemore Craig P.C./Reno
Eighth District Court Clerk

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deed of trust. *See Fed. Home Loan Mortg. Corp. v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136, 1148 (9th Cir. 2018) (noting that the Federal Foreclosure Bar "forecloses that purported interest prior to its vestment in [a purchaser]").

[3]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.