

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZIXIAO CHEN,
Appellant,
vs.
GREEN TREE SERVICING, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, D/B/A DITECH
FINANCIAL, LLC,
Respondent.

No. 76437-COA

FILED

APR 13 2020

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

ORDER OF AFFIRMANCE

Zixiao Chen 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 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 HOA acquired the property following the resulting foreclosure sale and conveyed it to Chen's predecessor. Once Chen acquired the property, she filed the underlying action seeking to quiet title against respondent Green Tree Servicing, LLC, d/b/a Ditech Financial, LLC (Ditech), 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 Ditech, finding 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) prevented the foreclosure sale from extinguishing Ditech's deed of trust. This appeal followed.

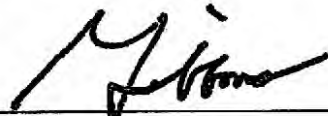
This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving 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 Ditech is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject Chen's arguments that Fannie Mae 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 Fannie Mae need not record its interest, Chen'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 Ditech were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Ditech's predecessor in the absence of contrary evidence. *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 Ditech's deed of trust and that Chen 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.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar 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.

cc: Hon. Ronald J. Israel, District Judge
The Law Office of Mike Beede, PLLC
Akerman LLP/Las Vegas
Eighth District Court Clerk