

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TEAL PETALS ST. TRUST,  
Appellant,  
vs.  
GREEN TREE SERVICING LLC, N/K/A  
DITECH FINANCIAL LLC,  
Respondent.

No. 77532-COA

**FILED**

APR 17 2020

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

*ORDER OF AFFIRMANCE*

Teal Petals St. Trust (Teal Petals) appeals from a district court order granting a motion for summary judgment in part, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; David Barker, Senior Judge.<sup>1</sup>

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. Teal Petals acquired the property from the purchaser at the resulting foreclosure sale and filed the underlying action seeking to quiet title against the predecessor to respondent Green Tree Servicing LLC, n/k/a Ditech Financial LLC (Ditech), the current beneficiary of the first deed of trust on the property. Ditech's predecessor counterclaimed seeking the same, and the parties stipulated to substitute

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<sup>1</sup>Although Senior Judge Barker signed the order, Ronald J. Israel, Judge, presided over the hearing on the matter and orally made the rulings later memorialized in the written order.

Ditech in its place. The parties later filed competing motions for summary judgment. The district court denied Ditech's motion insofar as it argued that its predecessor had tendered the superpriority portion of the HOA's lien to the HOA foreclosure agent. But the court granted Ditech's motion with respect to an alternative argument, 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 the 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. Indeed, despite Teal Petals' assertions to the contrary, neither Fannie Mae nor the Federal Housing Finance Agency (FHFA) were required to participate as parties in this action for the Federal Foreclosure Bar to apply. *See Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 248, 396 P.3d 754, 755 (2017) (holding that loan servicers have standing to assert the Federal Foreclosure Bar on a regulated entity's behalf). Moreover, we reject Teal Petals' 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). And because Fannie Mae need not record its interest, Teal Petals’ (or its predecessor’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.<sup>2</sup> *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


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<sup>2</sup>We reject Teal Petals’ arguments that this evidence lacked foundation. *See Daisy Tr.*, 135 Nev. at 235-36, 445 P.3d at 850-51 (concluding the district court did not abuse its discretion in relying on a similar combination of an employee declaration and accompanying printouts from a database where, as here, the declaration attested that the printouts satisfied the requirements of NRS 51.135, and the foreclosure-sale purchaser failed to demonstrate that those business records were not trustworthy). We also reject Teal Petals’ argument that Ditech was required under the statute of frauds to produce a written instrument evidencing Fannie Mae’s acquisition of the loan, as Teal Petals 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.”).

properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed of trust and that Teal Petals 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).<sup>3</sup> Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>3</sup>Because the Federal Foreclosure Bar protects a regulated entity's property from foreclosure "unless or until [the FHFA] affirmatively relinquishes [such protection]," we reject Teal Petals' argument that the FHFA impliedly consented 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).

<sup>4</sup>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.

cc: Chief Judge, Eighth Judicial District Court  
Hon. David Barker, Senior Judge  
Hon. Ronald J. Israel, District Judge  
Law Offices of Michael F. Bohn, Ltd.  
Akerman LLP/Las Vegas  
Fennemore Craig P.C./Reno  
Eighth District Court Clerk