

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

POS INVESTMENTS, LLC, A LIMITED
LIABILITY COMPANY,
Appellant,
vs.
CITIMORTGAGE, INC.,
Respondent.

No. 78765-COA

FILED

MAY 27 2020

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

ORDER OF AFFIRMANCE

POS Investments, LLC (POS), appeals from a district court order granting a motion for 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 her 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 predecessor to POS purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent CitiMortgage, Inc. (Citi), the beneficiary of the first deed of trust on the property. Citi counterclaimed seeking the same, and POS was substituted in place of its predecessor. Citi ultimately moved for summary judgment, which the district court granted, 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 Citi'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 Citi is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject POS' 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, we conclude that the testimony and business records produced by Citi were sufficient to prove Freddie Mac's ownership of the note and the agency relationship between it and Citi in the absence of contrary evidence.¹ *See*


¹To the extent POS contends that the assignment of the deed of trust to Citi from its predecessor, which purported to convey not only the deed of trust but also the promissory note, constitutes contrary evidence, we note that the supreme court recognized in *Daisy Trust* that Freddie Mac obtains its interest in a loan by virtue of the promissory note being negotiated to it.

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 Citi's deed of trust and that POS 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

Id. at 234 n.3, 445 P.3d at 849 n.3. Consequently, because the promissory note had already been negotiated to Freddie Mac at the time of the assignment of the deed of trust to Citi, the assignor 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 (2020) (“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.”).

cc: Hon. Ronald J. Israel, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk