

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
DITECH FINANCIAL, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY,
Respondent.

No. 77757-COA

FILED

JUN 10 2020

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

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Susan Johnson, 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. RH acquired the property from the purchaser at the resulting foreclosure sale and substituted into the underlying action, which RH's predecessor had already filed to quiet title against the predecessor to respondent Ditech Financial, LLC (Ditech), the current beneficiary of the first deed of trust on the property. Ditech's predecessor in turn counterclaimed to quiet title, and the parties eventually filed competing motions for summary judgment.

The district court ruled in favor of RH and certified its decision as final pursuant to NRCP 54(b), and Ditech, which had acquired the first

deed of trust and substituted into the proceeding in place of its predecessor, appealed that decision in Docket No. 75339. While that matter was pending before the supreme court, Ditech sought reconsideration in the district court and moved the supreme court for a limited remand for that purpose, which the supreme court granted after the district court certified its intent to reconsider the summary judgment in favor of RH. *Ditech Fin., LLC v. RH Kids, LLC*, Docket No. 75339 (Order Granting Motion for Limited Remand, September 19, 2018). On remand, the district court granted summary judgment in favor of Ditech, 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 Ditech's deed of trust. As a result, the supreme court dismissed Ditech's appeal in Docket No. 75339. *See Ditech Fin.*, Docket No. 75339 (Order Dismissing Appeal, November 26, 2018). RH Kids' appeal from the order entered on remand followed.

As a preliminary matter, RH argues that the district court lacked jurisdiction to reconsider the initial summary judgment in its favor because Ditech's appeal divested the court of jurisdiction over the matter. But although RH supports its jurisdictional challenge by citing *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978)—the supreme court decision that first announced the limited-remand procedure that was used here—RH fails to disclose the supreme court's order in Docket No. 75339 that granted Ditech's motion for a limited remand for the district court to reconsider the initial summary judgment in RH's favor, even though RH—through its current counsel—was copied on the order granting that motion and subsequently stipulated to the dismissal of the appeal in Docket No.

75339 after the district court entered its order on remand. Under these circumstances, we reject RH's purported jurisdictional challenge as wholly without merit. Additionally, we admonish counsel for RH, attorney Joseph Hong, for failing to fully disclose the record of the proceedings in the prior appeal.

Turning to the grant of summary judgment in Ditech's favor, this court reviews such an order 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 RH's arguments that the recorded documents showed that one of Ditech's predecessors actually owned the note at the time of the sale¹ and that,

¹RH contends that Freddie Mac did not own the loan because the deed of trust assignment from one of Ditech's predecessors to another predecessor also purported to transfer the promissory note. However, the supreme court recognized in *Daisy Trust v. Wells Fargo Bank, N.A.*, that Freddie Mac obtains its interest in a loan by virtue of the promissory note being negotiated to it. 135 Nev. 230, 234 n.3, 445 P.3d 846, 849 n.3 (2019). Consequently, because the promissory note had already been negotiated to Freddie Mac at the time of the assignment of the deed of trust at issue here,

alternatively, Freddie Mac's interest needed to be recorded. *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 declarations and business records produced by Ditech, including the authorizations in the Freddie Mac Single-Family Seller/Servicer Guide generally applicable to Freddie Mac's loan servicers, were sufficient to prove Freddie Mac's ownership of the note and the agency relationship between Freddie Mac and Ditech 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).

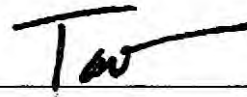
Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed of trust and that RH took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018) (holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interest

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.”).

of regulated entities under FHFA conservatorship without affirmative FHFA consent). Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Susan Johnson, District Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

²Insofar 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.