IN THE COURT OF APPEALS OF THE STATE OF NEVADA

B. QUEEN VICTORIA, LLC,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 78139-COA

FILED

JUN 12 2020

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

ORDER OF AFFIRMANCE

B. Queen Victoria, LLC (BQV), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, 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. When the purchaser at the resulting foreclosure sale also failed to pay monthly assessments, the HOA again mailed and recorded the requisite notices and proceeded to foreclose for a second time, at which point BQV purchased the property. One of the successors to the purchaser at the first foreclosure sale then filed the underlying action seeking, among other things, to cancel the foreclosure deed issued to BQV following the second foreclosure sale. BQV counterclaimed seeking to quiet title, and it also filed claims against respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—and the original purchaser (in place of which the other successor later substituted) seeking the same.

Ultimately, the parties filed competing motions for summary judgment, and the district court concluded that the successors to the original purchaser lost their interests in the property following the second foreclosure sale (a determination we affirm in Docket No. 78279-COA). The district court also concluded that BQV took the property subject to BOA's deed of trust on grounds that the Federal Home Loan Mortgage Corporation (Freddie Mac) owned the underlying loan at the time of both of the foreclosure sales such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) preserved BOA's interest. 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 BOA is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject BQV's arguments regarding the sufficiency of the evidence BOA presented to prove Freddie Mac's ownership of the loan, as the supreme court has held that virtually identical evidence was sufficient to prove Freddie Mac's interest in the absence of contrary evidence. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234-36, 445 P.3d 846, 849-51 (2019) (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).[1] To the extent that BQV contends that the assignment of the deed of trust to BOA from its predecessor constituted contrary evidence because it purported to transfer both the deed of trust and the underlying note, BOA's evidence demonstrated that Freddie Mac owned the loan at the time of the assignment. Accordingly, BOA's predecessor lacked authority to transfer the note, and any 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.").

In light of the foregoing, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of BOA's deed of trust and that BQV took the property subject to it.[2] *See Saticoy Bay LLC*

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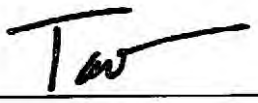
[1]Although BQV is correct that the bank in *Daisy Trust* produced not only Freddie Mac's business records but also its own records to prove the agency relationship between itself and Freddie Mac, *see id.* at 232, 445 P.3d at 848, we reject BQV's contentions that such evidence is necessary to prove Freddie Mac's interest or that its absence somehow undermines BOA's case. *Cf. Berezovsky v. Moniz*, 869 F.3d 923, 932-33, 932 n.8 (9th Cir. 2017) (upholding the district court's ruling that Freddie Mac owned the loan on the basis of Freddie Mac's uncontroverted business records).

[2]We reject BQV'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 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]").

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, we

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

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Kenneth C. Cory, District Judge
The Wright Law Group
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

[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.