

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FORT APACHE HOMES, INC., A
NEVADA CORPORATION,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL ASSOCIATION; AND
DITECH FINANCIAL, LLC,
Respondents.

No. 77404-COA

FILED

JUN 26 2020

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

ORDER OF AFFIRMANCE

Fort Apache Homes, Inc. (Fort Apache), 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. Fort Apache purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Bank of America, N.A. (BOA), the beneficiary of the

first deed of trust on the property at the time of the sale.¹ The parties later filed competing motions for summary judgment, and the district court ruled in favor of BOA, 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 BOA'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 BOA is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject Fort Apache'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

¹BOA later assigned the deed of trust to respondent Ditech Financial, LLC. We refer to respondents collectively as "BOA" herein.

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, Fort Apache’s purported status as a bona fide purchaser is inapposite. *See id.* at 234, 445 P.3d at 849. Finally, the testimony and business records produced by BOA were sufficient to prove Fannie Mae’s ownership of the note and the agency relationship between it and BOA in the absence of contrary evidence.² *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 BOA’s deed of trust and that Fort Apache 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

²We reject Fort Apache’s argument that BOA was required under the statute of frauds to produce a written instrument evidencing Fannie Mae’s acquisition of the loan, as Fort Apache 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.”).

property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent).³ Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Because the Federal Foreclosure Bar protects a regulated entity's property from foreclosure "unless or until [the FHFA] affirmatively relinquishes [such protection]," we reject Fort Apache's argument that BOA bore the burden of showing that the FHFA did not consent to extinguishment of the deed of trust. *Id.* at 274, 417 P.3d at 368 (first alteration in original) (internal quotation marks omitted). We also reject Fort Apache'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 Inv. 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]").

cc: Hon. Ronald J. Israel, District Judge
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