

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

6344 LEGEND FALLS TRUST, A
NEVADA TRUST,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL ASSOCIATION,
Respondent.

No. 77001-COA

FILED

AUG 07 2020

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

ORDER OF AFFIRMANCE

6344 Legend Falls Trust (Legend Falls) appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

The original owner of the subject property failed to make periodic payments to his 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. Legend Falls 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. BOA counterclaimed seeking the same, and the matter proceeded to a bench trial. Following trial, the district court ruled in favor of BOA, 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 BOA's deed of trust. This appeal followed.

This court reviews a district court's legal conclusions following a bench trial de novo, but we will not disturb the district court's factual

findings “unless they are clearly erroneous or not supported by substantial evidence.” *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).

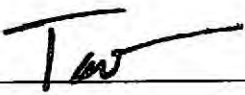
A review of the record from the underlying proceeding reveals that the district court properly entered judgment in favor of BOA. *Id.* We reject Legend Falls’ arguments that Freddie Mac was required to be the beneficiary of the deed of trust or otherwise record its interest in order to avail itself of 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, because Freddie Mac need not record its interest, Legend Falls’ 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 BOA were sufficient to prove Freddie Mac’s ownership of the note and its agency relationship with Freddie Mac in the absence of contrary evidence.¹ *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).


¹We reject Legend Falls’ argument that BOA was required under the statute of frauds to produce a written instrument evidencing Freddie Mac’s acquisition of the loan, as Legend Falls 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.”).

Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of BOA's deed of trust and that Legend Falls 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).² Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Because the Federal Foreclosure Bar protects a regulated entity's property from foreclosure "unless or until [the FHFA] affirmatively relinquishes [such protection]," we reject Legend Falls' argument that BOA bore the burden of showing that the FHFA did not consent 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). We also reject Legend Falls' 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]").

³Insofar 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: Hon. Joanna Kishner, District Judge
Ayon Law, PLLC
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk