

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

No. 78558-COA

FILED

AUG 28 2020

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

ORDER OF AFFIRMANCE

Premier One Holdings, Inc. (Premier), appeals from a district court order granting a motion for summary judgment in an interpleader and 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, and Premier purchased the property at the resulting foreclosure sale. Later, Premier and the beneficiary of the first deed of trust on the subject property, respondent Bank of America, N.A. (BOA), countersued to quiet title. BOA ultimately moved for summary judgment, which the district court granted, 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 Premier'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 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 declaration 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.¹ *See*


¹To the extent Premier contends that the assignment of the deed of trust to BOA from its predecessor constituted contrary evidence because it purported to convey not only the deed of trust but also the promissory note, we note that the supreme court recognized in *Daisy Trust* that Freddie Mac (or in this case Fannie Mae) obtains its interest in a loan by virtue of the promissory note being negotiated to it. *Id.* at 234 n.3, 445 P.3d at 849 n.3.

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 Premier 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.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

Consequently, because the promissory note had already been negotiated to Fannie Mae at the time of the assignment of the deed of trust to BOA, 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.”).

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.

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