

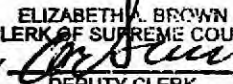
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND IV, LLC, A DOMESTIC
NON-PROFIT CORPORATION,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 79514-COA

FILED

AUG 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

TRP Fund IV, LLC (TRP), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, 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. At the resulting foreclosure sale, the HOA sold the property to TRP, which initiated the underlying action seeking to quiet title. Respondent Nationstar Mortgage, LLC (Nationstar)—holder of the first deed of trust on the property—counterclaimed seeking the same, and it ultimately moved for summary judgment. The district court ruled in Nationstar's favor, 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 Nationstar'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 Nationstar is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject TRP'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).¹ Moreover, we

¹TRP summarily contends that the Federal Foreclosure Bar could not have even impliedly preempted Nevada's recording statutes because it came into effect after Fannie Mae purportedly acquired the underlying loan. But TRP provides no legal support for this assertion, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority), and our supreme court specifically stated in *Daisy Trust* that, because "Nevada's recording statutes did not require Freddie Mac to publicly record its ownership interest as a prerequisite for establishing that interest," the appellate courts "need not address [the] argument that the Federal Foreclosure Bar preempts Nevada's recording statutes," 135 Nev. at 234, 445 P.3d at 849. We

conclude that the testimony and business records produced by Nationstar were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Nationstar in the absence of contrary evidence.² See *Daisy Tr.*, 135 Nev. 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 Nationstar's deed of trust and that TRP took the property subject to it. See *Saticoy Bay LLC*


therefore reject TRP's argument on this point. Further, to the extent TRP requests that this court overrule *Daisy Trust*, we cannot overrule Nevada Supreme Court precedent. See *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"); cf. *People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of [the California Supreme Court]." (alteration in the original) (internal quotation marks omitted)).

²To the extent TRP contends that the publically recorded deed of trust as of the time of the foreclosure sale constituted contrary evidence because it indicated that Nationstar's predecessor was then the owner of the underlying note, TRP fails to address the fact that Fannie Mae acquired the loan *after* that deed of trust was recorded, see *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38, and it does not identify any evidence rebutting Nationstar's evidence that Fannie Mae acquired the loan or otherwise indicating that Fannie Mae transferred the loan back to Nationstar's predecessor, see *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment). Accordingly, we reject this argument.

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.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mark R. Denton, District Judge
Hong & Hong
Snell & Wilmer LLP/Salt Lake City
Snell & Wilmer, LLP/Tucson
Snell & Wilmer/Phoenix
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk

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.