IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANNY, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
BAYVIEW LOAN SERVICING, LLC,
Respondent.

No. 78129-COA

ORDER OF AFFIRMANCE

Danny, LLC (Danny), 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; Timothy C. Williams, Judge.

The original owner of the subject property failed to make periodic payments to her 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. The HOA sold the property at the resulting foreclosure sale, and the HOA's foreclosure agent filed the underlying interpleader action to distribute the proceeds from the sale among all interested parties. During the course of the action, Danny acquired the property, and both Danny and respondent Bayview Loan Servicing, LLC (Bayview)—holder of the first deed of trust on the property—sought to quiet title. Bayview ultimately moved for summary judgment, which the district court granted, 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 Bayview'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 Bayview is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject Danny's 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).[1] Moreover, we

[1]Danny summarily contends that the Federal Foreclosure Bar could not have even impliedly preempted Nevada's recording statutes because it came into effect after Freddie Mac purportedly acquired the underlying loan. But Danny 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

conclude that the testimony and business records produced by Bayview were sufficient to prove Freddie Mac's ownership of the note and the agency relationship between it and Bayview 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

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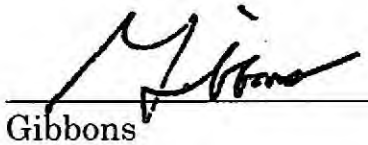
unsupported by cogent argument or relevant authority), and our supreme court specifically stated in *Daisy Trust* that, because "Nevada's recording statutes did not require Freddie Mac to publicly record its ownership interest as a prerequisite for establishing that interest," the appellate courts "need not address [the] argument that the Federal Foreclosure Bar preempts Nevada's recording statutes," 135 Nev. at 234, 445 P.3d at 849. We therefore reject Danny's argument on this point. Further, to the extent Danny 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)).

[2]To the extent Danny contends that the publically recorded deed of trust as of the time of the foreclosure sale constituted contrary evidence because it indicated that Bayview's predecessor was then the owner of the underlying note, Danny fails to address the fact that Freddie Mac 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 Bayview's evidence that Freddie Mac acquired the loan or otherwise indicating that Freddie Mac transferred the loan back to Bayview'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.

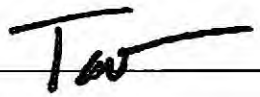
original promissory note must be produced for the Federal Foreclosure Bar to apply).

Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Bayview's deed of trust and that Danny 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.[3]



_____, C.J.
Gibbons



_____, J.
Tao

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Bulla

[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.

cc: Hon. Timothy C. Williams, District Judge
Akerman LLP/Las Vegas
Hong & Hong
Eighth District Court Clerk