

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 10404
FROSTBURG,
Appellant,
vs.
OCWEN LOAN SERVICING, LLC; AND
DITECH FINANCIAL, LLC,
Respondents.

No. 77747-COA

FILED

SEP 18 2020

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

ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 10404 Frostburg (Saticoy Bay) appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, 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. Appellant Saticoy Bay purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Ocwen Loan Servicing, LLC (Ocwen), the beneficiary of the first deed of trust on the property at the time of the foreclosure sale. Ocwen filed an answer, and respondent Ditech Financial, LLC (Ditech)—the current beneficiary of the first deed of trust—

later intervened and filed its own answer and counterclaim. Both Ocwen and Ditech (collectively Ditech) ultimately moved for summary judgment, as did Saticoy Bay. The district court ruled in favor of Ditech, 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 Ditech'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 Ditech is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. We reject Saticoy Bay'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). Moreover, we conclude that the declaration and business records produced by Ditech were sufficient to prove Freddie Mac's ownership of the note and the agency relationship between it and Ocwen 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).

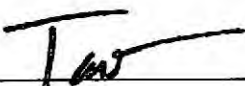
Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed of trust and that Saticoy Bay took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018) (holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the

¹To the extent Saticoy Bay contends that the assignment of the deed of trust to Ocwen 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 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. Consequently, because the promissory note had already been negotiated to Freddie Mac at the time of the assignment of the deed of trust to Ocwen, 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.").

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

cc: Hon. Kenneth C. Cory, District Judge
Law Offices of Michael F. Bohn, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

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.