IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEVADA SANDCASTLES, LLC,
Appellant,
vs.
GREEN TREE SERVICING, LLC, N/K/A DITECH FINANCIAL, LLC,
Respondent.

No. 79882-COA

FILED

OCT 29 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nevada Sandcastles, LLC (Sandcastles), appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in a 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 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. Sandcastles acquired the property from the purchaser at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Green Tree Servicing, LLC, n/k/a Ditech Financial, LLC (Ditech), the beneficiary of the first deed of trust on the property at the time.[1] The parties later filed competing motions for

[1]During the pendency of this appeal, Ditech assigned its interest in the deed of trust to a nonparty. But that transfer does not affect Ditech's ability to participate in this matter. *Cf.* NRCP 25(c) ("If an interest is transferred, the action may be continued by or against the original party unless the [district] court [orders otherwise]."); *Triple Quest, Inc. v.*

summary judgment, and the district court ruled in favor of Ditech, 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 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 Sandcastles' arguments regarding the sufficiency of the evidence Ditech presented to prove Fannie Mae's ownership of the loan (i.e., Fannie Mae's business records and the authorizations in the Fannie Mae Servicing Guide generally applicable to its loan servicers), as the supreme court held in

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Cleveland Gear Co., Inc., 627 N.W.2d 379, 383 (N.D. 2001) ("The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named.").

Daisy Tr. v. Wells Fargo Bank, N.A.,[2] that virtually identical evidence was sufficient to prove such an interest in the absence of contrary evidence. *See* 135 Nev. 230, 234-36, 445 P.3d 846, 849-51 (2019) (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).[3] Insofar as Sandcastles argues that Ditech's failure to produce the tri-party custodial agreement between Ditech, Fannie Mae, and the physical custodian of the note constitutes contrary evidence, we reject its argument. Indeed, because the evidence produced by Ditech was sufficient under *Daisy Trust*, nothing more was required, *see id.*, and the absence of such an agreement in the record therefore does not in any way impugn Fannie Mae's interest. Moreover, to the extent Sandcastles contends that

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[2]We recognize that the supreme court entered its decision in *Daisy Trust* after briefing was completed in the underlying proceeding on the parties' respective motions for summary judgment, but before the district court resolved those motions. While Sandcastles argues that we should reverse the summary judgment for Ditech because the district court did not permit it to file a supplemental brief concerning *Daisy Trust*, we discern no basis for relief, as the outcome would have been the same for the reasons stated herein even if Sandcastles had been permitted to file a supplemental brief. *Cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

[3]Although Sandcastles is correct that the bank in *Daisy Trust* produced not only Freddie Mac's business records but also its own records to prove the agency relationship between itself and Freddie Mac, *see id.* at 232, 445 P.3d at 848, we reject Sandcastles' contentions here that such evidence is necessary to prove Ditech's relationship with Fannie Mae or that its absence somehow undermines Ditech's case. *Cf. Berezovsky v. Moniz*, 869 F.3d 923, 932-33, 932 n.8 (9th Cir. 2017) (upholding the district court's ruling that Freddie Mac owned the loan on the basis of Freddie Mac's uncontroverted business records).

the various assignments of the deed of trust constitute contrary evidence because they purported to transfer both the deed of trust and the underlying note, Ditech's evidence demonstrated that Fannie Mae nevertheless owned the loan at the time the assignments were made. Accordingly, the assignors lacked authority to transfer ownership of the loan, and any language in the assignments purportedly doing 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.").

We also reject Sandcastles' argument that Fannie Mae was required to record its interest in order to avail itself of the Federal Foreclosure Bar. *See Daisy Tr.*, 135 Nev. at 233-34, 445 P.3d at 849 (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). And because Fannie Mae need not record its interest, Sandcastles' purported status as a bona fide purchaser is inapposite. *See id.* at 234, 445 P.3d at 849. Moreover, although Sandcastles contends that Ditech was required under the statute of frauds to produce a written instrument evidencing Fannie Mae's acquisition of the loan, Sandcastles 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.").

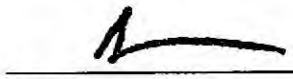
In light of the foregoing, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed

of trust and that Sandcastles 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
The Wright Law Group
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

[4]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.