

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 8320
BERMUDA BEACH,
Appellant,
vs.
DITECH FINANCIAL LLC, F/K/A
GREEN TREE SERVICING, LLC,
Respondent.

No. 80244-COA

FILED

NOV 20 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 8320 Bermuda Beach (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; David M. Jones, 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. Saticoy Bay acquired the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Ditech Financial LLC, f/k/a Green Tree Servicing, LLC (Ditech), the beneficiary of the first deed of trust on the property. Ditech counterclaimed seeking the same and later moved for summary judgment. The district court ruled in Ditech'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 the 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. Indeed, despite Saticoy Bay's assertions to the contrary, neither Fannie Mae nor the Federal Housing Finance Agency (FHFA) were required to participate as parties in this action for the Federal Foreclosure Bar to apply. *See Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 248, 396 P.3d 754, 755 (2017) (holding that loan servicers have standing to assert the Federal Foreclosure Bar on a regulated entity's behalf). Moreover, we reject Saticoy Bay'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). And because Fannie Mae need not record its interest, Saticoy Bay’s purported bona fide purchaser status is inapposite. *See id.* at 234, 445 P.3d at 849.


Finally, we conclude that the testimony and business records produced by Ditech were sufficient to prove Fannie Mae’s ownership of the note and the agency relationship between it and Ditech 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

¹We reject Saticoy Bay’s argument that Ditech was required under the statute of frauds to produce a written instrument evidencing Fannie Mae’s acquisition of the loan, as Saticoy Bay 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.”).

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).² Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Because the Federal Foreclosure Bar protects a regulated entity's property from foreclosure "unless or until [the FHFA] affirmatively relinquishes [such protection]," we reject Saticoy Bay's argument that the FHFA impliedly consented to extinguishment of the deed of trust. *Id.* at 274, 417 P.3d at 368 (first alteration in original) (internal quotation marks omitted).

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.

cc: Hon. David M. Jones, District Judge
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Wolfe & Wyman LLP
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Eighth District Court Clerk