


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS LLC,
Appellant,
vs.
DITECH FINANCIAL LLC, F/K/A
GREEN TREE SERVICING, LLC,
Respondents.

No. 79620-COA

FILED

DEC 05 2020

CLERK OF THE COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

RH Kids LLC (RH) appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, 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. The entity that purchased the property at the resulting foreclosure sale conveyed it to RH, which 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. The matter proceeded to a bench trial, following which 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 legal conclusions following a bench trial de novo, but we will not disturb the district court's factual

findings “unless they are clearly erroneous or not supported by substantial evidence.” *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).

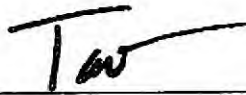
RH's only argument on appeal is that Ditech failed to prove that Fannie Mae had an interest in the property that was subject to the Federal Foreclosure Bar. Specifically, RH contends that Fannie Mae was required to record its interest when it acquired the underlying loan in 2005 because it was not yet under the conservatorship of the Federal Housing Finance Agency (FHFA). From there, RH reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada's recording statutes. But RH misreads our supreme court's holding in *Daisy Trust v. Wells Fargo Bank, N.A.*, which was not that the Federal Foreclosure Bar preempts Nevada's recording statutes, but rather that the recording statutes simply do not apply to the situation at issue here where an entity owns the loan and its agent is the beneficiary of the recorded deed of trust. 135 Nev. 230, 234, 445 P.3d 846, 849 (2019) (specifically noting that, in light of its disposition, the court “need not address Freddie Mac's argument that the Federal Foreclosure Bar preempts Nevada's recording statutes”). Accordingly, RH's argument is without merit.


Because the testimony and business records adduced at trial 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, *see id.* at 234-36, 445 P.3d at 849-51, the district court properly entered judgment in favor Ditech. *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);
Radecki, 134 Nev. at 621, 426 P.3d at 596. Consequently, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Hong & Hong
Wolfe & Wyman LLP
Eighth District Court Clerk

¹We decline to impose sanctions against RH or its counsel under NRAP 38 as requested by Ditech. Nevertheless, we remind RH's counsel of his obligations under RPC 3.1 to only advance arguments if there is a basis in law and fact for doing so and, when existing precedent does not align with his clients' interests, to present good-faith arguments for its modification or reversal.