

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND V, LLC, A DOMESTIC NON-PROFIT CORPORATION,
Appellant,
vs.
OCWEN LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND NATIONSTAR MORTGAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondents.

No. 79429-COA

FILED

JAN 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

TRP Fund V, LLC (TRP), appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., 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. TRP's predecessor purchased the property at the resulting foreclosure sale and later conveyed it to TRP, which filed the underlying action seeking to quiet title against respondent Nationstar Mortgage, LLC (Nationstar), the beneficiary of the first deed of trust on the property.¹ Nationstar later moved for summary judgment, which the district court granted, concluding that the Federal National Mortgage

¹TRP also filed suit against Nationstar's predecessor, respondent Ocwen Loan Servicing, LLC. For clarity, we refer to respondents collectively as Nationstar herein.

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 Nationstar'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.

TRP presents two arguments on appeal. First, it contends that Fannie Mae did not own the underlying loan at the time of the foreclosure sale—or that there was at least conflicting evidence on this point—because the recorded deed of trust at the time of the sale identified the loan's originator, Morgan Financial, Inc., as the lender. But TRP ignores the extent to which the evidence submitted by Nationstar below demonstrates that Fannie Mae acquired the loan *after* the deed of trust was recorded, meaning that the deed of trust's representation as to which entity originated the loan does not in any way contradict Nationstar's evidence. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234-36, 445 P.3d 846, 849-51 (2019) (holding that records similar to those considered here were sufficient to prove the regulated entity's interest in the absence of contrary evidence). We therefore reject TRP's argument on this point.

TRP next argues that Nationstar failed to prove that Fannie Mae had an interest in the property that was subject to the Federal

Foreclosure Bar. Specifically, TRP contends that Fannie Mae was required to record its interest when it acquired the underlying loan in 2007 because it was not yet under the conservatorship of the Federal Housing Finance Agency (FHFA). From there, TRP reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada's recording statutes.² But TRP misreads our supreme court's holding in *Daisy Trust*, 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 a regulated entity owns the loan and its agent is the beneficiary of the recorded deed of trust. *Id.* at 234, 445 P.3d at 849 (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, TRP's argument is without merit.

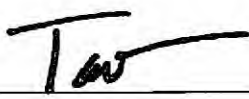
Because the testimony and business records produced below were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Nationstar in the absence of contrary evidence, *see id.* at 234-36, 445 P.3d at 849-51, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Nationstar's deed of trust and that TRP took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270,

²TRP failed to raise this issue in its opening brief and instead raised it for the first time in its reply brief. Although we need not consider it, *see Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived), TRP's argument nevertheless fails on its merits as set forth herein.

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). Consequently, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

³We decline to impose sanctions against TRP or its counsel under NRAP 38 as requested by Nationstar. Nevertheless, we remind TRP and its counsel of their obligation to provide this court with an adequate appellate record. See NRAP 30(b)(3); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). We further remind TRP'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.