IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMIELI INVESTMENT, LLC,
Appellant,
vs.
DITECH FINANCIAL LLC, F/K/A GREEN TREE SERVICING, LLC, A FOREIGN LIMITED LIABLITY COMPANY REGISTERED WITH THE NEVADA SECRETARY OF STATE,
Respondent.

No. 81156-COA

FILED

APR 29 2021

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

ORDER OF AFFIRMANCE

Emieli Investment, LLC (Emieli), appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Adriana Escobar, 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. A predecessor in interest to Emieli purchased the property at the resulting foreclosure sale and filed a complaint seeking to quiet title against respondent Ditech Financial LLC (Ditech), the beneficiary of the first deed of trust on the property. Emieli later substituted into the action in its predecessor's place, and the parties moved for summary judgment. The district court ruled in favor of Ditech, concluding 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. The district court also concluded that the deed of trust survived the sale because Ditech's predecessor's obligation to tender the

superpriority amount of the HOA's lien was excused as a matter of law. 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.

On appeal, Emieli 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 assignment of the deed of trust to one of Ditech's predecessors purported to convey not only the deed of trust, but also the promissory note. But our supreme court recognized in *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234 n.3, 445 P.3d 846, 849 n.3 (2019), that Freddie Mac (or in this case Fannie Mae) obtains its interest in a loan by virtue of the promissory note being negotiated to it. Section A2-1-04 of the Fannie Mae Servicing Guide, of which we take judicial notice, NRS 47.130; NRS 47.170, stands for the same proposition. Consequently, because the promissory note had already been negotiated to Fannie Mae at the time of the relevant assignment of the deed of trust, Ditech's predecessor lacked authority to transfer the note, and the language in the assignment purporting to do so had no effect.[1] *See* 6A C.J.S.

[1]Emieli argues that the language in the assignment amounted to a false representation concerning title under NRS 205.395, a category C

Assignments § 111 (2021) ("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.").

Emieli further argues that Ditech failed to prove that Fannie Mae had an interest in the property that was subject to the Federal Foreclosure Bar. Specifically, Emieli 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, Emieli reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada's recording statutes. But Emieli 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. 135 Nev. 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, we reject Emieli's argument on this point.

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 Ditech's predecessor 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

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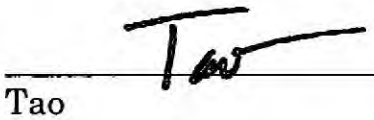
felony. Even assuming Emieli is correct, it fails to provide any explanation as to how that would entitle it to relief in this civil matter. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

the deed of trust and that Emieli 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). Consequently, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Adriana Escobar, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[2]We decline to impose sanctions against Emieli or its counsel under NRAP 38 as requested by Ditech. Nevertheless, we remind Emieli 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 Emieli'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. Finally, in light of our disposition, we note that we need not consider the parties' alternative arguments concerning whether tender was excused.