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,
Respondent.

No. 81798-COA

FILED

AUG 19 2021

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

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Tierra Danielle 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. A predecessor in interest to RH 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, which counterclaimed seeking the same. RH later substituted into the action in its predecessor's place, and both parties ultimately 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. 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 dispute 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 disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, RH argues that, in spite of the Federal Foreclosure Bar, it took the subject property free and clear of Fannie Mae's interest because Fannie Mae failed to record its acquisition of the underlying loan.[1] *See* NRS 111.325 (providing that "[e]very conveyance of real property within this State . . . which shall not be recorded . . . shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property . . . where his or her own conveyance shall be first duly recorded"). Specifically, RH contends that Fannie Mae's acquisition of the

[1]Implicit in this argument is the notion that Nevada's recording statutes are not preempted by the Federal Foreclosure Bar. However, like our supreme court in *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234, 445 P.3d 846, 849 (2019), we need not address this issue in light of our disposition.

loan itself amounted to a conveyance of land as defined by statute, *see* NRS 111.010(1) (defining "[c]onveyance" to "embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered"), and that our supreme court did not address this specific question in *Daisy Trust*, where—according to RH—it simply held that an entity like Fannie Mae need not be the record beneficiary of the deed of trust to benefit from the Federal Foreclosure Bar, *see* 135 Nev. at 233-34, 445 P.3d at 849, not that such an entity is not required to record anything at all in connection with the acquisition of the underlying loan. We disagree.

To the extent the opinion in *Daisy Trust* did not squarely address the argument RH advances here, the supreme court did specifically characterize the appellant in that case as arguing "that Nevada's recording statutes required Freddie Mac to record *its interest in the loan*," and it proceeded to broadly reject that argument by stating that it "agree[d] with the district court that Nevada's recording statutes did not require Freddie Mac to publicly record *its ownership interest* as a prerequisite for establishing that interest." *Id.* (emphasis added). Thus, although the *Daisy Trust* court largely focused on the extent to which it is permissible for an entity like Fannie Mae to own a mortgage loan while its agent serves as the record beneficiary of the deed of trust, and it stated that it was "not persuaded . . . that NRS 111.325 is implicated because there is no requirement that the beneficial interest in the deed of trust needed to be

'assigned' or 'conveyed' to Freddie Mac in order for Freddie Mac to acquire ownership of the loan," *id.* at 233, 445 P.3d at 849, the supreme court impliedly rejected the notion that the acquisition of a promissory note is a conveyance as defined in NRS Chapter 111. And later unpublished orders from the supreme court applying *Daisy Trust* support this understanding.[2] *See, e.g., BDJ Invs., LLC v. Ditech Fin. LLC*, Docket No. 77347 (Order of Affirmance, September 18, 2020) (citing *Daisy Trust* in support of the notion that "we recently held that Nevada law does not require a federal entity, such as Fannie Mae, to publicly record its ownership interest in the subject loan, and that its acquisition of a loan is not a conveyance within the meaning of NRS 111.325"); *see also* NRAP 36(c)(3) (providing that post-2015 unpublished Nevada Supreme Court orders are citable for their persuasive value); *U.S. Bank, N.A. v. White Horse Estates Homeowners Ass'n*, 987 F.3d 858, 863-67 (9th Cir. 2021) (looking to unpublished Nevada Supreme Court orders to contextualize that court's existing published precedent).

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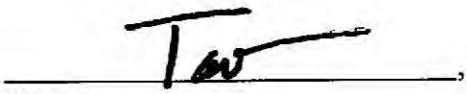
[2]We note that the United States Bankruptcy Court for the District of Nevada has held that negotiation of a promissory note, which is the manner in which an entity like Fannie Mae acquires its interest in a home loan, *see Daisy Tr.*, 135 Nev. at 234 n.3, 445 P.3d at 849 n.3, does not amount to a conveyance of an interest in real property under Nevada law. *In re Phillips*, 491 B.R. 255, 271 (Bankr. D. Nev. 2013) (concluding that "[n]egotiation of a promissory note . . . does not convey an interest in real property" and that it therefore does not implicate Nevada's statute of frauds).

In light of the foregoing, RH has failed to demonstrate that reversal is warranted,[3] and we

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

_____, C.J.
Gibbons



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[3]RH argues for the first time in its reply brief that the United States Supreme Court's recent decision in *Collins v. Yellen*, 141 S. Ct. 1761 (2021), requires us to remand this matter for consideration of whether the unconstitutional structure of the Federal Housing Finance Agency caused RH to suffer compensable harm in connection with its acquisition of the property. We decline to consider this belatedly raised argument. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (providing that arguments raised for the first time in a reply brief are waived); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

[4]At this time, we decline to impose sanctions against RH or its counsel under NRAP 38 as requested by Ditech. Nevertheless, we note that full review of this matter was made possible only by Ditech's decision to file supplemental appendices, and we remind RH 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 (2008).

cc: Hon. Tierra Danielle Jones, District Judge
Hong & Hong
Wolfe & Wyman LLP
Eighth District Court Clerk