IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,
Appellant,
vs.
BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION,
Respondent.

No. 81535-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; Kenneth C. Cory, Judge.

The original owner of the subject property failed to make periodic payments to his 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 after RH later acquired the property, it filed a complaint seeking to quiet title against respondent Bank of America, N.A. (BOA), the beneficiary of the first deed of trust on the property. BOA filed an answer and counterclaim in which it asserted 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) as an affirmative defense, and it sought both quiet title and declaratory relief. BOA ultimately moved for summary judgment, which the district court granted, concluding that the Federal National Mortgage Association (Fannie Mae)

owned the underlying loan such that 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 presents multiple arguments in favor of reversal. First, it contends that summary judgment was inappropriate because conflicting evidence existed as to whether Fannie Mae owned the underlying loan. RH points to the fact that the presale assignment of the deed of trust to BOA purported to convey not only the deed of trust, but also the underlying promissory note. For support, it cites *Jones v. U.S. Bank, National Ass'n*, in which our supreme court noted that "[t]ransferring a deed of trust . . . also transfers the obligation that it secures unless the parties to the transfer agree otherwise." 136 Nev. 129, 132, 460 P.3d 958, 961 (2020) (internal quotation marks omitted).

But the *Jones* court went on to conclude that an "assignment of the deed of trust *absent any indication that the deed of trust was being transferred split from the note* supports the inference that the note had not been previously transferred . . . and that [the assignor] was exercising its

authority to transfer the note with the deed of trust." *Id.* at 133, 460 P.3d at 962 (emphasis added). And here, BOA produced evidence demonstrating that the note had been transferred to Fannie Mae split from the deed of trust prior to the relevant assignment of that security interest. Specifically, BOA produced business records from Fannie Mae showing that, at the time BOA's predecessor assigned the deed of trust to BOA, Fannie Mae held the note while BOA became the record beneficiary of the deed of trust solely in its capacity as Fannie Mae's contractually authorized loan servicer. These records were materially identical to the records our supreme court held in *Daisy Trust v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 233-36, 445 P.3d 846, 849-51 (2019), were sufficient, in the absence of contrary evidence, to prove that a regulated entity like Fannie Mae owned the obligation secured by a deed of trust for which its contractually authorized loan servicer was the record beneficiary. Accordingly, BOA rebutted "the general presumption that the note traveled with the deed of trust," *Jones*, 136 Nev. at 132, 460 P.3d at 962, and RH fails to identify any contrary evidence.

To the extent RH contends that the assignment somehow could have transferred the loan even despite Fannie Mae's status as holder of the note and its intent that BOA serve merely as its agent, the common law "has long recognized that an assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had before assignment." *First Fin. Bank, N.A. v. Lane*, 130 Nev. 972, 978, 339 P.3d 1289, 1293 (2014) (internal quotation marks omitted); *see* 6A C.J.S. *Assignments* § 111 (2021 update) ("An assignee . . . ordinarily obtains only the rights possessed by the assignor at the time of the assignment, and no more."); *see also Reynolds v. Tufenkjian*,

136 Nev. 145, 151-53, 461 P.3d 147, 153 (2020) (relying on 6A C.J.S. *Assignments* (2016) to set forth general legal principles governing assignments). And the evidence submitted to the district court below—including excerpts from the Fannie Mae Servicing Guide, which governs the relationship between Fannie Mae and its loan servicers—indicated that when Fannie Mae acquires loans, it is at all times the owner and holder of the mortgage note while its agent serves merely as the beneficiary of the deed of trust. *See Daisy Tr.*, 135 Nev. at 234 n.3, 445 P.3d at 849 n.3 (discussing the analogous guide governing Freddie Mac's relationships with its servicers).

Thus, in light of RH's failure to identify any evidence indicating that BOA's predecessor held the promissory note or had any right to transfer it at the time of the assignment to BOA, or that Fannie Mae otherwise intended to transfer its ownership interest in the loan, it follows that the language in the assignment purporting to transfer the note to BOA had no legal effect beyond conveying the beneficial interest in the deed of trust. *See First Fin. Bank*, 130 Nev. at 978, 339 P.3d at 1293; 6A C.J.S. *Assignments* § 111 (2021 update); *see also In re Phillips*, 491 B.R. 255, 259 n.2 (Bankr. D. Nev. 2013) (acknowledging the distinction between transferring a property interest by assignment on the one hand, and the U.C.C.'s narrower definition of "transfer" with respect to negotiable instruments on the other). RH has therefore failed to demonstrate a genuine dispute of material fact as to Fannie Mae's ownership of the loan

sufficient to overcome summary judgment.[1] *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (setting forth the parties' respective burdens of production and persuasion on summary judgment).

RH alternatively 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.[2] *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 loan itself amounted to a conveyance of land as defined by statute, *see* NRS 111.010(1) (defining "[c]onveyance" to

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[1]RH also argues that the language in the assignment purporting to transfer the loan amounted to a false representation concerning title under NRS 205.395—a category C felony—and that BOA should not be permitted to gain advantage from this alleged wrong. But RH fails to cogently argue this point, and it does not appear from the record that it raised the issue below. *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); *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.").

[2]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*, 135 Nev. at 234, 445 P.3d at 849, we need not address this issue in light of our disposition.

"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.[3] *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). We therefore reject RH's argument on this point.

Finally, although RH does not dispute that BOA's affirmative defense based on the Federal Foreclosure Bar was not subject to a statute of limitations, it contends that the district court erred by granting BOA affirmative relief on its counterclaims because they were supposedly time-barred by the applicable six-year statute of limitations. *See JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, 136 Nev., Adv. Op. 68, 475 P.3d 52, 57 (2020) (holding that the six-year statute of limitations set

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[3]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. at 271 (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).

forth in 12 U.S.C. § 4617(b)(12) applies to claims brought to enforce the Federal Foreclosure Bar). But even if RH were correct on this point, any error in granting BOA affirmative relief on its claims would be harmless, as RH's argument relies upon a distinction without a difference; a judgment in favor of BOA declaring that its deed of trust survived the HOA's foreclosure sale has the same legal effect as a judgment against RH on its claims declaring that it did not purchase the property free and clear of the deed of trust. *See* NRS 40.010 ("An action [to quiet title] may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."); *Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 51, 437 P.3d 154, 157-58 (2019) (acknowledging that, although the proponent of a quiet title claim bears the burden to prove its title, because obtaining relief on such a claim requires proving superiority of title, the court must nevertheless analyze each party's competing claim to the property); *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted.").

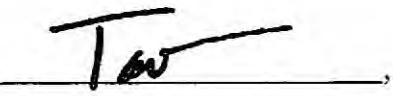
Regardless, we reject RH's argument that BOA did not explicitly assert a claim under the Federal Foreclosure Bar in its counterclaim and that it therefore failed to assert a claim for relief within the requisite six-year period. Because BOA asserted an affirmative foreclosure-bar defense, set forth the factual underpinnings of that defense, and expressly sought to quiet title, its counterclaim adequately asserted a claim for relief based upon the Federal Foreclosure Bar, and it did so within six years from the HOA's foreclosure sale. *See JPMorgan*, 136 Nev., Adv. Op. 68, 475 P.3d at 57 (acknowledging that claims for quiet title and

declaratory relief that rely upon the Federal Foreclosure Bar are subject to and may satisfy the six-year period); *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878 (Ct. App. 2020) ("A plaintiff who fails to use the precise legalese in describing his grievance but who sets forth the facts which support his complaint . . . satisfies the requisites of notice pleading." (internal quotation marks omitted)).

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

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

_____, C.J.
Gibbons



_____, J.
Tao

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Bulla

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[4]At this time, we decline to impose sanctions against RH or its counsel under NRAP 38 as requested by BOA. Nevertheless, we note that full review of this matter was made possible only by BOA'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*, 123 Nev. at 603, 172 P.3d at 135. Moreover, to the extent 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: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 1
Hong & Hong
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk