

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,  
Appellant,  
vs.  
G&P INVESTMENT ENTERPRISES,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 77912-COA

**FILED**

**APR 27 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Nationstar Mortgage LLC (Nationstar) appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, 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. Respondent G&P Investment Enterprises, LLC (G&P), purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against Nationstar, the current beneficiary of the first deed of trust on the property. Nationstar counterclaimed seeking the same, and the matter proceeded to a bench trial. Following trial, the district court ruled in favor of G&P, finding that the foreclosure sale extinguished the deed of trust and that Nationstar failed to

prove 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) would have preserved the 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).

On appeal, Nationstar argues that it presented un rebutted evidence of Fannie Mae's interest in the property such that the district court should have entered judgment in its favor. We agree. The testimony and business records produced by Nationstar and adduced at trial were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Nationstar's predecessor in the absence of contrary evidence. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 234-36, 445 P.3d 846, 849-51 (2019) (affirming the district court's decision in favor of the bank on similar evidence and concluding that neither the loan servicing agreement nor the original promissory note must be produced for the Federal Foreclosure Bar to apply). We reject G&P's argument—and the district court's conclusion—that Nationstar's failure to produce the tri-party custodial agreement between it, its servicer, and the physical custodian of the note constituted contrary evidence. Because the evidence produced by Nationstar was sufficient under *Daisy Trust*, nothing more was required, *see id.*, and therefore the absence of that particular agreement in

the record does not in any way impugn Fannie Mae's interest. And in any event, the district court misconstrued the trial testimony of Fannie Mae's representative when it found that she testified that no such agreement existed. Instead, her testimony provided that she had not personally seen the agreement pertaining to the underlying loan, but she reaffirmed that, in light of Fannie Mae's business records, it did in fact own the loan.

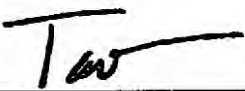
To the extent the district court determined that the recorded deed of trust showed that an entity other than Fannie Mae owned the loan at the time of the underlying foreclosure sale, we note that Fannie Mae was not required to be the beneficiary of the deed of trust or otherwise record its interest in order to avail itself of the Federal Foreclosure Bar. *See id.* at 233-34, 445 P.3d at 849 (holding that a deed of trust need not be assigned to a regulated entity in order for it to own the secured loan—meaning that Nevada's recording statutes are not implicated—where the deed of trust beneficiary is an agent of the note holder). Accordingly, the district court should have concluded that the Federal Foreclosure Bar prevented extinguishment of Nationstar's deed of trust and that G&P 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).

Given the foregoing, we reverse the district court's judgment and remand for entry of judgment in favor of Nationstar consistent with this order. *See Pink v. Busch*, 100 Nev. 684, 691, 691 P.2d 456, 461 (1984)

("[U]pon reversal, where the material facts have been fully developed at trial and are undisputed such that the issues remaining are legal rather than factual, we will . . . remand the case to the lower court with directions to enter judgment in accordance with [our order].")

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jerry A. Wiese, District Judge  
Akerman LLP/Las Vegas  
Hong & Hong  
Fennemore Craig P.C./Reno  
Eighth District Court Clerk