

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 7612  
CERTITUDE AVE, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,  
vs.  
OCWEN LOAN SERVICING, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 79904-COA

**FILED**

SEP 11 2020

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

*ORDER OF AFFIRMANCE*

Saticoy Bay LLC Series 7612 Certitude Ave (Saticoy Bay) appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in a quiet title action. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Senior 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. Saticoy Bay acquired the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Ocwen Loan Servicing, LLC (Ocwen), the current beneficiary of the first deed of trust on the property. Ocwen counterclaimed seeking the same, and the parties eventually filed competing motions for summary judgment. The district court ruled in favor of Ocwen, finding that

the Federal Home Loan Mortgage Corporation (Freddie Mac) 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 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.

A review of the record from the underlying proceeding reveals that no genuine issue of material fact exists and that Ocwen is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. Indeed, despite Saticoy Bay's assertions to the contrary, neither Freddie Mac nor the Federal Housing Finance Agency (FHFA) were required to participate as parties in this action for the Federal Foreclosure Bar to apply. *See Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 248, 396 P.3d 754, 755 (2017) (holding that loan servicers have standing to assert the Federal Foreclosure Bar on a regulated entity's behalf).<sup>1</sup>

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<sup>1</sup>Although servicing rights were transferred from Ocwen to another entity prior to the HOA foreclosure sale and underlying proceeding, we reject Saticoy Bay's assertion that this transfer deprived Ocwen of standing

Moreover, we reject Saticoy Bay's arguments regarding the sufficiency of the evidence Ocwen presented to prove Freddie Mac's ownership of the loan and the continuing agency relationship between Freddie Mac and Ocwen<sup>2</sup> (i.e., Freddie Mac's business records and the authorizations in the Freddie Mac Servicing Guide generally applicable to its loan servicers), as the supreme court has held that virtually identical evidence was sufficient to prove such an interest and relationship 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 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).<sup>3</sup> We also reject Saticoy Bay's argument that Freddie Mac was

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to assert the Federal Foreclosure Bar on Freddie Mac and the FHFA's behalf since, pursuant to section 7101.15 of the Freddie Mac Servicing Guide, Ocwen remained subject to the guide's requirements as a former servicer of the loan, including its obligation under section 8101(1), of which we take judicial notice, NRS 47.130; NRS 47.170, to represent and defend Freddie Mac's interest in the loan. *See Nationstar*, 133 Nev. at 250, 396 P.3d at 756 ("To have standing, the party seeking relief [must have] a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party." (alteration in original) (internal quotation marks omitted)).

<sup>2</sup>As noted above, although Ocwen is not the current servicer for Freddie Mac, the transfer of servicing rights to another entity did not release Ocwen from its responsibilities with respect to the mortgage under the Freddie Mac Servicing Guide.

<sup>3</sup>To the extent Saticoy Bay contends that the assignment of the deed of trust from one of Ocwen's predecessors to another constituted contrary evidence because it purported to transfer both the deed of trust and the

required to 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). And because Freddie Mac need not record its interest, Saticoy Bay’s purported status as a bona fide purchaser is inapposite. *See id.* at 234, 445 P.3d at 849. Moreover, although Saticoy Bay contends that Ocwen was required under the statute of frauds to produce a written instrument evidencing Freddie Mac’s acquisition of the loan, Saticoy Bay was not a party to that transaction and therefore lacks standing to invoke the statute of frauds. *See Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628 (1963) (“The defense of the statute of frauds is personal, and available only to the contracting parties or their successors in interest.”).

In light of the foregoing, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ocwen’s


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underlying note, we note that the supreme court recognized in *Daisy Trust* that Freddie Mac obtains its interest in a loan by virtue of the promissory note being negotiated to it. *Id.* at 234 n.3, 445 P.3d at 849 n.3. Consequently, because the promissory note had already been negotiated to Freddie Mac at the time of the assignment at issue here, the assignor lacked authority to transfer the note, and the language in the assignment purporting to do so had no effect. *See 6A C.J.S. Assignments* § 111 (2020) (“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.”).

deed of trust and that Saticoy Bay 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). Thus, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Hon. Jennifer P. Togliatti, Senior Judge  
Law Offices of Michael F. Bohn, Ltd.  
Wright, Finlay & Zak, LLP/Las Vegas  
Fennemore Craig P.C./Reno  
Eighth District Court Clerk

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<sup>4</sup>Insofar as 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.