

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRELL STREET TRUST,
Appellant,
vs.
WELLS FARGO BANK, N.A.,
Respondent.

No. 80919-COA

FILED

NOV 25 2020

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

ORDER OF AFFIRMANCE

Ferrell Street Trust (Ferrell) appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Timothy C. Williams, 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. Ferrell acquired the property from the entity that purchased it at the resulting foreclosure sale and filed the underlying action seeking to quiet title against respondent Wells Fargo Bank, N.A. (Wells Fargo)—the beneficiary of the first deed of trust on the property—which counterclaimed seeking the same. The parties later filed competing motions for summary judgment, and the district court ruled in favor of Wells Fargo, 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 Wells Fargo's 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.

As a threshold matter, Ferrell contends that the district court erred in determining that Wells Fargo's counterclaims were subject to the six-year statute of limitations for contract claims set forth in 12 U.S.C. § 4617(b)(12)(A)(i) and were therefore timely. But, as recently recognized by both our supreme court and the United States Court of Appeals for the Ninth Circuit, Wells Fargo's claims—which sought to enforce the Federal Foreclosure Bar and stemmed from the underlying mortgage contract—were indeed subject to the six-year statute of limitations set forth in the federal statute. *See JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, 136 Nev., Adv. Op. 68, ___ P.3d ___, ___ (Oct. 29, 2020); *M & T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 858 (9th Cir. 2020). Thus, the district court correctly determined that Wells Fargo's claims were timely.¹

¹Even if Wells Fargo's claims for affirmative relief were untimely, it nevertheless asserted the preemptive effect of the Federal Foreclosure Bar as an affirmative defense in its answer, and such defenses are not subject to statutes of limitations. *See Nev. State Bank v. Jamison Family P'ship*, 106 Nev. 792, 798-99, 801 P.2d 1377, 1381-82 (1990) (applying equitable principles and reasoning that, although the filing of a complaint does not toll the statute of limitations governing a defendant's compulsory counterclaim, the defendant may nevertheless raise the same theory as an affirmative defense); *Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 102, 389 P.2d 394, 396 (1964) ("Limitations do not run against defenses."); *see also*

Turning to the merits, a review of the record from the underlying proceeding reveals that no genuine issue of material fact exists and that Wells Fargo is entitled to judgment as a matter of law. *Id.* at 729, 121 P.3d at 1029. Indeed, despite Ferrell’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). We also reject Ferrell’s arguments that Freddie Mac was 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 Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019) (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, Ferrell’s purported status as a bona fide purchaser is inapposite. *See id.* at 234, 445 P.3d at 849.

Moreover, although Ferrell contends that Wells Fargo was required under the statute of frauds to produce a written instrument evidencing Freddie Mac’s acquisition of the loan, Ferrell was not a party to that transaction and therefore lacks standing to invoke the statute of

City of Saint Paul v. Evans, 344 F.3d 1029, 1033-34 (9th Cir. 2003) (concluding that statutes of limitations do not apply to defenses because “[w]ithout this exception, potential plaintiffs could simply wait until all available defenses are time barred and then pounce on the helpless defendant”).

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.”); see also *Easton Bus. Opportunities, Inc. v. Town Exec. Suites—E. Marketplace, LLC*, 126 Nev. 119, 127 n.4, 230 P.3d 827, 832 n.4 (2010) (noting that “statute of frauds provisions . . . cannot ordinarily be asserted by third persons” (internal quotation marks omitted)). And finally, we conclude that the declarations and business records produced by Wells Fargo were sufficient to prove Freddie Mac’s ownership of the note and the agency relationship between it and Wells Fargo in the absence of contrary evidence.² See *Daisy Tr.*, 135 Nev. at 234-36, 445 P.3d at 849-51 (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).


Accordingly, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Wells Fargo’s deed of trust and that Ferrell 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

²We reject Ferrell’s arguments that this evidence lacked foundation and constituted inadmissible hearsay. See *Daisy Tr.*, 135 Nev. at 235-36, 445 P.3d at 850-51 (concluding the district court did not abuse its discretion in relying on a similar combination of employee declarations and accompanying printouts from a database where, as here, the declarations attested that the printouts satisfied the requirements of NRS 51.135, and the foreclosure-sale purchaser failed to demonstrate that those business records were not trustworthy).

property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent). Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Snell & Wilmer, LLP/Tucson
Snell & Wilmer, LLP/Las Vegas
Snell & Wilmer, LLP/Salt Lake City
Fennemore Craig P.C./Reno
Eighth District Court Clerk

³Insofar 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.