

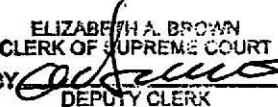
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JJND ENTERPRISES, LLC,
Appellant,
vs.
DITECH FINANCIAL LLC, F/K/A
GREEN TREE SERVICING LLC,
Respondent.

No. 80248-COA

FILED

JAN 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

JJND Enterprises, LLC (JJND), 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; Kenneth C. Cory, Judge.

The original owner of the subject property failed to make periodic payments to her 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. The HOA acquired the property at the resulting foreclosure sale and then conveyed it to JJND, which filed the underlying quiet title action against the predecessor to respondent Ditech Financial LLC, f/k/a Green Tree Servicing LLC (Ditech)—the beneficiary of the first deed of trust on the property. After Ditech's predecessor asserted a counterclaim for quiet title, Ditech substituted into the action, and the parties filed competing motions for summary judgment. The district court ruled in favor of Ditech, finding 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 Ditech'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.

On appeal, JJND initially challenges the summary judgment for Ditech on grounds that it was time-barred from seeking affirmative relief based on the Federal Foreclosure Bar. But, as recently recognized by our supreme court, Ditech's claims—which stemmed from the underlying mortgage contract—were subject to the six-year statute of limitations set forth in 12 U.S.C. § 4617(b)(12). *See JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, 136 Nev., Adv. Op. 68, 475 P.3d 52, 54 (2020). And because Ditech's claims were brought within six years of the HOA's foreclosure sale, reversal is unwarranted on this basis.¹

¹Even if the claims for affirmative relief were untimely, Ditech also relied on the Federal Foreclosure Bar as an affirmative defense, 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

JJND next argues that Ditech failed to prove that Fannie Mae had an interest in the property that was subject to the Federal Foreclosure Bar. Specifically, Ditech contends that Fannie Mae was required to record its interest when it acquired the underlying loan in 2003 because it was not yet under the conservatorship of the Federal Housing Finance Agency (FHFA). From there, JJND reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada's recording statutes. But JJND misreads our supreme court's holding in *Daisy Trust v. Wells Fargo Bank, N.A.*, which was not that the Federal Foreclosure Bar preempts Nevada's recording statutes, but rather that the recording statutes simply do not apply to the situation at issue here where an entity owns the loan and its agent is the beneficiary of the recorded deed of trust. 135 Nev. 230, 234, 445 P.3d 846, 849 (2019) (specifically noting that, in light of its disposition, the court "need not address Freddie Mac's argument that the Federal Foreclosure Bar preempts Nevada's recording statutes"). Accordingly, JJND's argument is without merit.

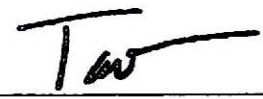
Because the declarations and business records produced by Ditech were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Ditech's predecessor, in the absence of contrary evidence, *see id.* at 234-36, 445 P.3d at 849-51, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed of trust and that JJND took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l*

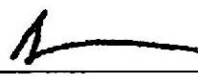
defenses."); *see also City of Saint Paul v. Evans*, 344 F.3d 1029, 1033-34 (9th Cir. 2003) (concluding that statutes of limitations do not apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait until all available defenses are time barred and then pounce on the helpless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

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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 1
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

²We decline to impose sanctions against JJND or its counsel under NRAP 38 as requested by Ditech. Nevertheless, we remind JJND's counsel of his obligations under RPC 3.1 to only advance arguments if there is a basis in law and fact for doing so and, when existing precedent does not align with his clients' interests, to present good-faith arguments for its modification or reversal.