

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD F. BERGEN,
Appellant,
vs.
SABLES, LLC; SERVIS ONE, INC.,
D/B/A BSI FINANCIAL SERVICES;
WILMINGTON SAVINGS FUND
SOCIETY, FSB, D/B/A CHRISTIANA
TRUST, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS TRUSTEE
FOR BROUHHAM 1 FUND TRUST,
Respondents.

No. 79491-COA

FILED

NOV 16 2020

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

ORDER OF AFFIRMANCE

Richard F. Bergen appeals from a district court order dismissing a complaint in a contract and real property action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Bergen filed the underlying complaint against respondents Sables, LLC (Sables),¹ Servis One, Inc., d/b/a BSI Financial Services (BSI), and Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust (Christiana), asserting claims for rescission, fraudulent concealment, and quiet title, and also seeking injunctive relief and an accounting. Essentially, Bergen sought a ruling invalidating his mortgage on the subject property because the securitization of his loan supposedly constituted fraud

¹Asserting that it was named in this matter solely in its capacity as trustee under the deed of trust, Sables declared nonmonetary status pursuant to NRS 107.029 and did not participate any further in the action.

and violated the terms of his agreement with the original lender, Christiana and BSI—the beneficiary of the first deed of trust on the property and the servicer of the underlying loan, respectively—moved to dismiss the entirety of Bergen’s complaint, arguing primarily that claim and issue preclusion, as well as various statutes of limitations, barred all of Bergen’s claims. The district court agreed and dismissed the complaint. This appeal followed.

Bergen sets forth various arguments on appeal in support of reversal. However, because we conclude that the district court properly applied the doctrine of claim preclusion, we need only address that issue. We review a district court order granting a motion to dismiss on grounds of claim preclusion *de novo*. *Rock Springs Mesquite II Owners’ Ass’n v. Raridan*, 136 Nev., Adv. Op. 28, 464 P.3d 104, 107 (2020). The purpose of claim preclusion is “to obtain finality by preventing a party from filing another suit that is based on the same set of facts that were present in the initial suit.” *Weddell v. Sharp*, 131 Nev. 233, 240, 350 P.3d 80, 85 (2015) (internal quotation marks omitted). Generally, claim preclusion bars a subsequent suit where (1) the final judgment in the first suit is valid, (2) the second suit is based on the same claims or any part of them that were or could have been brought in the first suit, and (3) the parties or their privies in the second suit are the same as they were in the first suit. *Id.* at 241, 350 P.3d at 85.

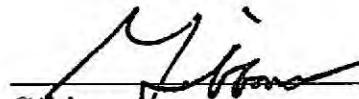
All of the elements of claim preclusion are satisfied here. See *id.* Bergen brought two previous lawsuits stemming from the same underlying events and setting forth largely the same allegations, and both of those suits ended in valid final judgments on the merits, the most recent

of which was affirmed by the Supreme Court of Nevada. *See Bergen v. Mortg. Lender Servs., Inc.*, Docket No. 58557 (Order of Affirmance, January 17, 2013). Moreover, to the extent Bergen presents different claims or allegations in this suit, he fails to explain why he could not have raised those issues in either of the previous actions.² *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). Finally, as shown by the publicly recorded documents in the chain of title that the district court considered below, Christiana and BSI are in privity with the predecessor entities Bergen sued in the previous actions. *See Mendenhall v. Tassinari*, 133 Nev. 614, 618, 403 P.3d 364, 369 (2017) (discussing the concept of privity and recognizing that successors are generally privies of their predecessors in interest); *Brelian v. Preferred*

²We note that Bergen did raise challenges in the instant complaint to multiple assignments of the deed of trust and promissory note that occurred after the previous actions concluded. But those challenges were based largely upon the same, previously rejected securitization theories Bergen raised in the first two actions. Moreover, although he did set forth a new theory that none of the assignments complied with NRS 104.9203 because there was supposedly no value given for them, he could have raised that issue in the second action, which he filed against—among others—the first assignee in the chain of assignments. And regardless, Bergen’s argument on this point is without merit, as NRS 104.9203 does not at all pertain to assignments of security interests or set forth any requirements therefor. Rather, it merely provides that value must be given for a creditor to enforce its security interest against the debtor, and the value given here was the underlying home loan.

Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (stating that a court may consider matters of public record in ruling on a motion to dismiss). Thus, because the district court properly dismissed Bergen's complaint on grounds of claim preclusion, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Richard F. Bergen
Maurice Wutscher LLP/San Francisco
Maurice Wutscher LLP/Chicago
Kravitz Schnitzer Johnson, A Professional Corporation/Las Vegas
ZBS Law, LLP
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.