

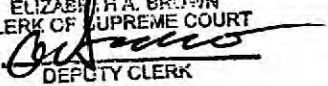
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LN MANAGEMENT LLC, SERIES  
GARDEN NORTH DRIVE,  
Appellant,  
vs.  
GARDEN PARK TOWNHOUSE  
ASSOCIATION,  
Respondent.

No. 79754-COA

**FILED**

MAR 25 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

LN Management LLC, Series Garden North Drive (LNM) appeals from a district court order dismissing a complaint in a civil action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Respondent Garden Park Townhouse Association (the HOA) foreclosed on its delinquent-assessment lien against real property pursuant to NRS Chapter 116. LNM's predecessor purchased the property at the foreclosure sale and then conveyed it to LNM, which filed an action seeking to quiet title against the beneficiary of the first deed of trust on the property. During the litigation, the beneficiary disclosed to LNM 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 the deed of trust. That matter ultimately concluded with a stipulated order dismissing all claims with prejudice.

LNM then filed the underlying action against the HOA asserting breach of contract, breach of the implied covenant of good faith

and fair dealing, and civil conspiracy. In relevant part, LNM alleged that the HOA breached its obligations and warranties in connection with its foreclosure sale because it failed to disclose Fannie Mae's interest or obtain its consent to foreclose. The HOA filed a motion to dismiss LNM's complaint for failure to state a claim, which the district court granted. The district court concluded that all of LNM's claims were barred under the doctrines of claim and issue preclusion, that the good-faith-and-fair-dealing and civil-conspiracy claims were time-barred, and that LNM failed to allege any breach of the terms set forth in the trustee's deed upon sale sufficient to sustain a breach-of-contract claim. This appeal followed.

We review an order granting an NRCP 12(b)(5) motion to dismiss de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

At the outset, we note that LNM fails to present any argument on appeal concerning the district court's dismissal of its conspiracy claim, and any such argument is therefore waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Moreover, because, as discussed below, we conclude that LNM's remaining claims fail as a matter of law, we need not address all of the specific grounds relied upon by the district court, including its alternative rulings regarding preclusion and the relevant statutes of limitations. *See Stockmeier v. State, Dep't of Corr.*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) ("Dismissal is proper where the allegations [in the complaint] are insufficient to establish the elements of a claim for relief." (internal quotation marks omitted)); *see also Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 598-99, 245

P.3d 1198, 1202 (2010) (affirming an order of dismissal on grounds different from those relied upon by the district court).

With respect to LNM's allegations concerning breach of contract, the district court properly dismissed that claim, as LNM failed to allege the existence of an actual contract between itself and the HOA. An HOA's foreclosure on its delinquent-assessment lien is governed strictly by statute, not by contractual negotiations resulting in a written agreement. *See generally* NRS 116.3116-.3117. Moreover, a foreclosure deed is an instrument by which land is conveyed, not an enforceable contract between two parties.<sup>1</sup> *See Deed, Black's Law Dictionary* (11th ed. 2019) (providing that a deed is "[a] written instrument by which land is conveyed"). Accordingly, LNM failed to adequately plead the existence of a contract between the parties, which is an essential element of a breach-of-contract claim, *see Richardson v. Jones*, 1 Nev. 405, 408 (1865) (establishing that a plaintiff must prove the existence of a contract in a breach-of-contract claim), and dismissal was therefore appropriate. *See Stockmeier*, 124 Nev. at 316, 183 P.3d at 135.

Turning finally to LNM's allegations concerning breach of the implied covenant of good faith and fair dealing, the district court likewise appropriately dismissed that claim, as such a claim presupposes the existence of a contract. *See JPMorgan Chase Bank, N.A. v. KB Home*, 632 F. Supp. 2d 1013, 1022-23 (D. Nev. 2009) (providing that the implied duty of good faith and fair dealing "presupposes the existence of a contract"


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<sup>1</sup>LNM relies on the definition of "contract" found in NRS 111.707, but that definition pertains to the "Nonprobate Transfer of Property Upon Death" statutory subchapter, which is inapplicable here. Regardless, nothing in the foreclosure deed's recitals ruled out the possibility that Fannie Mae owned the loan secured by the first deed of trust.

(internal quotation marks omitted)); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 233, 808 P.2d 919, 923 (1991) (noting that a claim for breach of the duty of good faith and fair dealing is sometimes considered “a ‘contort’ because of its hybrid contract-tort nature”). And to the extent LNM bases its claim on the HOA’s obligation under NRS 116.1113 to perform its duties pursuant to NRS Chapter 116 in good faith, we note that nothing in the applicable version of NRS 116.3116-.3117 imposes a duty on an HOA to disclose whether the loan secured by the first deed of trust is federally owned or to seek the federal entity’s consent to foreclose. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</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.

cc: Chief Judge, Eighth Judicial District Court  
Hon. Joseph T. Bonaventure, Senior Judge  
Kerry P. Faughnan  
Marquis Aurbach Coffing  
Eighth District Court Clerk