


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LN MANAGEMENT LLC, SERIES 9346
GRACEFUL GOLD,
Appellant,
vs.
SANTA FE HOMEOWNERS
ASSOCIATION,
Respondent.

No. 81133-COA

FILED

MAR 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

LN Management LLC, Series 9346 Graceful Gold (LNM) appeals from a district court order dismissing a complaint in a civil action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Respondent Santa Fe Homeowners Association (the HOA) foreclosed on its delinquent-assessment lien against real property pursuant to NRS Chapter 116. LNM purchased the property at the foreclosure sale and 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. LNM later filed the underlying action against the HOA asserting breach of contract, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation. 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. 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 substantive argument on appeal concerning the district court's dismissal of its negligent-misrepresentation claim, and the issue is therefore waived.¹ 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."); *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 and relevant authority).

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

¹Additionally, we note that LNM makes no effort to respond to the HOA's argument that the negligent-misrepresentation claim is precluded under the economic-loss doctrine. See *Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge cannot be regarded as unwitting and in our view constitutes a clear concession by appellants that there is merit in respondents' position").

instrument by which land is conveyed, not an enforceable contract between two parties.² 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 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)).


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” (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

²LNM 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.

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.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 4
Kerry P. Faughnan
Leach Kern Gruchow Anderson Song/Las Vegas
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.