

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRP FUND IV, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
U.S. BANK, N.A., AS TRUSTEE FOR
THE HOLDERS OF MASTER
ADJUSTABLE RATE MORTGAGES
TRUST 2007-3, FORM AND TYPE OF
EQUITY UNKNOWN,
Respondent.

No. 81153-COA

FILED

MAY 14 2021

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

ORDER OF AFFIRMANCE

TRP Fund IV, LLC (TRP), appeals from a final judgment in a quiet title action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Respondent U.S. Bank, N.A., initiated a nonjudicial foreclosure sale to foreclose on the first deed of trust on the subject property, which was previously purchased by TRP at a homeowners' association's (HOA) NRS Chapter 116 foreclosure sale. TRP then sued U.S. Bank, seeking to quiet title to the subject property. For support, TRP alleged that the deed of trust is invalid because U.S. Bank is not its beneficiary or the holder of the underlying note. U.S. Bank moved to dismiss, arguing that TRP's case was barred under the claim preclusion doctrine because TRP could have asserted its claims in a prior proceeding involving the parties in which TRP unsuccessfully sought to quiet title on grounds that the HOA's foreclosure sale extinguished the deed of trust. Over TRP's objection, the district court granted U.S. Bank's motion. This appeal followed.

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. 235, 237, 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.

Beginning with the claim preclusion test, TRP only argues on appeal that the second prong has not been met because its instant claims could not have been brought in the prior action as they were not ripe. But we need not consider this argument, as TRP failed to present any relevant legal authority to support its assertion that its claims had not ripened at the time of the prior proceeding. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by citation to relevant legal authority). Moreover, although U.S. Bank argued in its answering brief that TRP's ripeness argument fails under *Mendenhall v. Tassinari*, 133 Nev. 614, 403 P.3d 364 (2017), which addressed the interplay between claim preclusion, compulsory/permissive counterclaims, and ripeness, TRP failed to anticipate the argument in its opening brief or otherwise address the argument in its reply brief. In this way, TRP waived any challenge to U.S. Bank's position. *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"). As a result, TRP failed to demonstrate that the district court erred insofar as it determined that the claim preclusion test was satisfied. *Rock Springs*, 136 Nev. at 237, 464 P.3d at 107.

Nevertheless, TRP argues that, pursuant to the supreme court's decision in *Boca Park Marketplace Syndications Group, LLC v. Higco, Inc.*, 133 Nev. 923, 407 P.3d 761 (2017), claim preclusion did not apply to bar the underlying claims because it sought declaratory relief in the prior proceeding. But *Boca Park* holds that "claim preclusion does not apply where the original action sought *only* declaratory relief." 133 Nev. at 926, 407 P.3d at 764 (emphasis added). Thus, TRP's argument fails since, in addition to a declaratory judgment, it sought coercive relief in the prior proceeding including damages and an injunction. *See id.* at 928, 407 P.3d at 765 (explaining that the exception to the claim preclusion doctrine for declaratory judgment actions does not apply when such actions also seek coercive relief such as damages or an injunction).


TRP also contends that its underlying claims were exempt from application of the claim preclusion doctrine because barring those claims violates its due process rights, and it once again cites *Boca Park* to support its argument. *See id.* at 925, 407 P.3d at 763 (explaining that exemptions to the claim preclusion doctrine exist to address situations where, as relevant here, the doctrine conflicts with a party's constitutional rights). But *Boca Park* did not address the interaction of due process rights and preclusion principles, and TRP has not identified any relevant legal


authority addressing the interplay of these legal principles or that would otherwise support its assertion that the application of claim preclusion constitutes a due process violation under the circumstances presented here. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Thus, in light of the foregoing, we conclude that the district court did not err by dismissing TRP's claims in the underlying proceeding on claim preclusion grounds. *Rock Springs*, 136 Nev. at 237, 464 P.3d at 107. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 32
The Wright Law Group
Akerman LLP/Las Vegas
Eighth District Court Clerk

¹We decline to impose sanctions against TRP as requested by U.S. Bank. Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they need not be reached given the disposition of this appeal.