

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LN MANAGEMENT LLC SERIES 7638
SUDAN,
Appellant,
vs.
SE'VILLA COMMUNITY
ASSOCIATION,
Respondent.

No. 81282-COA

FILED

MAY 27 2021

ELIZABETH A. BEWEN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

LN Management LLC Series 7638 Sudan (LNM) appeals from a district court order dismissing a complaint in a civil action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Respondent Se'Villa Community 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 Home Loan Mortgage Corporation (Freddie Mac) 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 false 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 Freddie Mac'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 argument on appeal concerning the district court's dismissal of its false-misrepresentation claim, and the issue 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."); *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 instrument by which land is conveyed, not an enforceable contract between

two parties.¹ *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)).

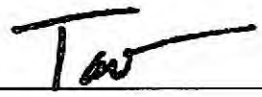
Turning finally to LNM's allegations concerning breach of the implied covenant of good faith and fair dealing, the district court likewise appropriately dismissed that claim, as such a claim presupposes the existence of a contract. *See JPMorgan Chase Bank, N.A. v. KB Home*, 632 F. Supp. 2d 1013, 1023 (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

¹LNM 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 Freddie Mac owned the loan secured by the first deed of trust.

LNМ 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.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 24
Kerry P. Faughnan
Alverson Taylor & Sanders
Eighth District Court Clerk

²Insofar 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.