

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LN MANAGEMENT LLC SERIES 2937
BARBOURSVILLE,
Appellant,
vs.
FAIRBROOK COMMUNITY
ASSOCIATION,
Respondent.

No. 81744-COA

FILED

AUG 31 2021

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

ORDER OF AFFIRMANCE

LN Management LLC Series 2937 Barboursville (LNM) appeals from a district court summary judgment in a civil action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Respondent Fairbrook Community Association (the HOA) foreclosed on its delinquent-assessment lien against real property pursuant to NRS Chapter 116, and LNM acquired the property from the purchaser at the sale. During subsequent litigation concerning whether LNM took the property subject to a first deed of trust, LNM learned 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 claims for breach of contract, breach of the duty of good faith set forth in NRS 116.1113, and civil conspiracy. After the district court dismissed that complaint with leave to amend, LNM ultimately filed a second amended complaint asserting a single claim for false misrepresentation, and the HOA filed an answer. The parties engaged in written discovery, and the HOA thereafter filed a motion

for summary judgment, which the district court granted on multiple grounds over LNM's opposition. This appeal followed.

We review both a dismissal pursuant to NRCP 12(b)(5) and an order granting summary judgment de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). On appeal, LNM contends that genuine disputes of material fact remained concerning its claim for false misrepresentation such that summary judgment was inappropriate. It further contends that the district court erred in dismissing its claim for breach of the duty of good faith.

With respect to summary judgment, as argued by the HOA in its answering brief, LNM fails to set forth any argument concerning one of the independent grounds the district court provided for granting summary judgment in the HOA's favor. Namely, the HOA argued in its motion for summary judgment that LNM had failed to provide a computation of damages or any other documentation in discovery to demonstrate the amount of its alleged damages, that a showing of damages was a necessary element of the claim for false misrepresentation, and that summary judgment was therefore warranted. The district court agreed, concluding that LNM's failures on this point were fatal to its claim for false misrepresentation. *See* NRCP 16.1(a)(1)(A)(iv) (requiring parties to disclose "a computation of each category of damages claimed by the disclosing party").

The district court specifically noted that LNM failed to set forth any argument at all on this point in its opposition to the HOA's motion for summary judgment. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to

have been waived and will not be considered on appeal.”). Likewise, on appeal, LNM failed to set forth any argument in its opening brief concerning the district court’s ruling on this point,¹ and despite acknowledging the HOA’s argument that affirmance is warranted on this ground in its reply brief, LNM still failed to set forth any argument whatsoever concerning the computation-of-damages issue. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161, 252 P.3d 668, 672 (2011) (providing that issues not raised on appeal are deemed waived); *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-82 (11th Cir. 2014) (providing that passing references to issues in an appellate brief are generally insufficient to preserve them for review).

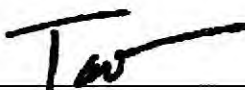
In light of LNM’s failure to challenge the district court’s ruling on this point, we assume the ruling was correct, and we need not consider any of LNM’s arguments with respect to its claim for false misrepresentation. *See Johnson v. Commonwealth*, 609 S.E.2d 58, 60 (Va. Ct. App. 2005) (assuming the trial court’s unchallenged alternative ruling was correct on its merits); *cf. Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming a dismissal on an alternative ground the district court provided for it—without addressing the merits of that ground—where the appellants failed to challenge that ruling). Accordingly, we affirm the district court’s order granting summary judgment.

¹LNM summarily contends in its opening brief that it “was damaged in an amount equal to the value of the deed of trust that [it] believed was extinguished” and subsequently learned was not. But LNM makes no effort to explain its failure to provide a computation of that amount or how the district court supposedly erred in granting summary judgment on that ground. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

Turning to the district court's earlier dismissal of LNM's original claims, we likewise affirm. The HOA foreclosure process results in a foreclosure deed—which is a conveyance, not a contract—and is governed strictly by statute, not by contractual negotiations resulting in a written agreement. *See generally* NRS 116.3116-.3117; *see also Deed, Black's Law Dictionary* (11th ed. 2019) (providing that a deed is “[a] written instrument by which land is conveyed”). And nothing in the applicable versions of the relevant statutes 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. *See* NRS 116.3116-.3117.

Based on the foregoing, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 32
Kerry P. Faughnan
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk