IN THE SUPREME COURT OF THE STATE OF NEVADA

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATE HOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN TRUST 2007-12T1, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-12T1,
Appellant,
vs.
ANTHONY S. NOONAN IRA, LLC,
Respondent.

No. 83933

FILED
JUN 16 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court orders granting a motion to dismiss, denying a motion to amend, and denying reconsideration in a quiet title case. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.[1]

This is an NRS Chapter 116 foreclosure case. In a previous case, respondent Anthony S. Noonan IRA, LLC, sued the deed of trust beneficiary of record, nonparty Preferred Home Mortgage Company, for quiet title to the property at issue. Noonan had purchased the property at an HOA foreclosure sale. Preferred Home did not answer the complaint, and the district court ultimately entered a default judgment in Noonan's favor on March 23, 2015. On April 22, 2015, an assignment of the beneficial interest under the deed of trust from nonparty MERS to appellant, referred

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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to herein as Bank of New York, was recorded. On April 28, 2015, Bank of New York moved to intervene and to set aside the judgment, asserting that it had been assigned the beneficial interest under the deed of trust such that Preferred Home retained no interest in the property. The district court granted the motions and later granted summary judgment to Bank of New York, quieting title to the property in its favor. We reversed and remanded, because the district court lacked jurisdiction to grant intervention or to set aside the default judgment, and in turn grant summary judgment in Bank of New York's favor, when Bank of New York was not a party to that case. *Anthony S. Noonan IRA, LLC v. Bank of N.Y. Mellon*, No. 71365, 2018 WL 5095841 (Nev. Oct. 12, 2018) (Order of Reversal and Remand). On remand, the district court denied Bank of New York's motion to substitute itself for Preferred Home.

After the denial of its motion to substitute, Bank of New York filed the instant action against Noonan seeking to quiet title to the property in its favor. Noonan moved to dismiss and argued, as is relevant to our disposition, that Bank of New York's claims were barred by claim preclusion due to the previous default judgment against Preferred Home, which, Noonan argued, was in privity with Bank of New York. The district court granted the motion and dismissed Bank of New York's complaint and, after the district court denied reconsideration, this appeal followed. On appeal, we construe the district court's order as one granting summary judgment, rather than as one granting a motion to dismiss, because the district court considered documents that were not "incorporated by reference or integral

to the claim[s]" in Bank of New York's complaint.[2] *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (quoting 5B Charles Alan Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed. 2004)).

Claim preclusion "bars a later action based on the claims that . . . could have been asserted in the first case." *Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 136 Nev. 235, 237, 464 P.3d 104, 107 (2020) (quoting *Boca Marketplace Syndications Grp., LLC v. Higco, Inc.*, 133 Nev. 923, 924-25, 407 P.3d 761, 763 (2017)). And, while this court has adopted a three-part test for claim preclusion, on appeal Bank of New York argues only that it lacks privity with Preferred Home. *See id.* at 238, 464 P.3d at 107 (stating that claim preclusion requires that "the parties or their privies [in the two cases] are the same" (quoting *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008))). Bank of New York asserts that it was assigned the interest in the property from MERS, rather than from Preferred Home, and that it cannot be a successor-in-interest to Preferred Home because its interest in the property predates the default judgment against Preferred Home.

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[2]Accordingly, we reject Bank of New York's argument that the complaint's allegations must be taken as true. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (recognizing that the district court considers evidence when granting or denying summary judgment rather than taking complaint allegations as true). And, even if we were to treat the challenged order as one granting a motion to dismiss, we note any additional allegation in Bank of New York's proposed amended complaint that it obtained an ownership interest in the deed of trust in 2007 is a legal conclusion that need not be accepted as true. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations . . . ." (internal quotation marks omitted)).

Privity exists "where the individual acquired an interest in the subject matter affected by the judgment through . . . one of the parties, as by . . . succession." *Mendenhall v. Tassinari*, 133 Nev. 614, 618, 403 P.3d 364, 369 (2017) (first alteration in original) (internal quotation marks omitted). Here, the evidence before the district court showed that (1) MERS was acting as Preferred Home's "nominee" as well as the nominee for Preferred Home's "successors and assigns"; and (2) a corporate assignment assigning MERS' interest under the deed of trust "AS NOMINEE FOR PREFFERED HOME MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS" to Bank of New York was recorded on April 22, 2015 (noting an effective assignment date of April 10, 2015), after the default judgment entered against Preferred Home. And Bank of New York admitted it knew about the case against Preferred Home before Noonan sought a default judgment. With these facts, we agree with the district court that Bank of New York and Preferred Home were privies such that claim preclusion bars the underlying complaint.[3] *See Five Star*, 124 Nev. at 1058, 194 P.3d at 715

[3]As we conclude claim preclusion applies, we need not consider the district court's alternative basis for dismissal—that Bank of New York's claims were barred by the relevant statute of limitations. And Bank of New York's due process argument, that Preferred Home lacked an interest in the property at the time of the default judgment and therefore could not adequately represent Bank of New York's interests, fails. As they were privies, the notice and opportunity to be heard given to Preferred Homes satisfies Bank of New York's due process rights. *See Paradise Palms Cmty. Ass'n v. Paradise Homes*, 89 Nev. 27, 30-31, 505 P.2d 596, 598-99 (1973) (recognizing that due process, which requires notice and an opportunity to be heard, is satisfied when claim preclusion is applied to parties that are privies). Finally, we also reject Bank of New York's argument that its judicial foreclosure claim survives even if we affirm the district court's order on claim preclusion grounds. *See Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364-65, 466 P.3d 1271, 1275-76 (2020) (stating that claim preclusion

(recognizing that one of the policy reasons behind claim preclusion is to allow a particular controversy to come to an end, despite substantive issues remaining, in fairness to the other party). Bank of New York's assertion that it has had an interest in the loan since 2007 lacks any evidentiary support; rather, the evidence provided by Bank of New York showed it obtained an interest in the loan as of April 10, 2015. And, because MERS was acting as Preferred Home's nominee, MERS' interest in the loan is the same interest held by Preferred Home such that the assignment from MERS to Bank of New York does not suggest a lack of privity between Preferred Home and Bank of New York. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 518-19, 286 P.3d 249, 258 (2012) (recognizing that identical deed of trust language created an agency relationship between MERS and the lender named in the deed of trust).

We also conclude that the district court did not abuse its discretion in denying Bank of New York's motion to amend its complaint when the proposed amendment sought to include an allegation that it obtained its interest in the property in 2007, which contradicted the initial complaint's allegation that MERS assigned the property to Bank of New York in April 2015. *See Holcomb Condo. Homeowners' Ass'n v. Steward Venture, LLC*, 129 Nev. 181, 191, 300 P.3d 124, 130-31 (2013) (reviewing an order denying a motion for leave to amend for an abuse of discretion); *see also Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (affirming the denial of a motion to amend a complaint where the proposed amendment did more than "allege other facts consistent with the challenged pleading"

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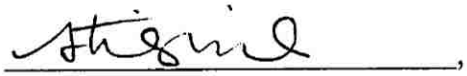
bars claims that could have been brought in the first action and applying claim preclusion where the ownership of a property was at issue in both cases).

and instead added allegations that contradicted the original complaint (internal quotation marks omitted)). We also see no abuse of discretion in the district court's denial of Bank of New York's motion for reconsideration on these issues. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing an order denying a motion for reconsideration for an abuse of discretion). Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Stiglich

_____, J.
Lee

_____, J.
Bell

cc: Hon. Joanna Kishner, District Judge
Akerman LLP/Salt Lake City
Akerman LLP/Las Vegas
Andersen & Beede
Eighth District Court Clerk