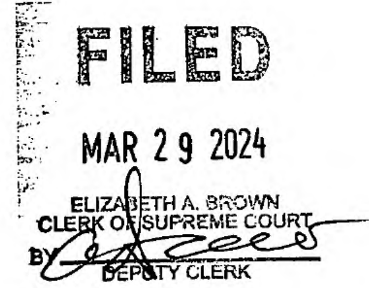
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CYNTHIA LOPEZ, AN INDIVIDUAL; AND LBB INVESTMENTS, LLC, A WYOMING LIMITED LIABILITY COMPANY,
Appellants,
vs.
U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE FOR SPRINGLEAF MORTGAGE LOAN TRUST 2013-1; NATIONSTAR MORTGAGE, LLC, A DELAWARE LIMITED LIABILTY COMPANY; NATIONAL DEFAULT SERVICING CORPORATION, AN ARIZONA CORPORATION; SOLUTIONSTAR HOLDINGS, LLC; AND ASSURANT FIELD ASSET SERVICES, INC., A TEXAS CORPORATION,
Respondents.

No. 82191-COA



ORDER OF AFFIRMANCE

Cynthia Lopez and LBB Investments, LLC, appeal from a district court final judgment in a real property action. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

In 1997, Greg Lyndes purchased real property from Majesty E. Reger Living Trust (Majesty). To facilitate the purchase, Lyndes obtained two home loans evidenced by two promissory notes secured by deeds of trust. The first note promised repayment to lender Freemont Investment & Loan (Freemont) and was secured by a first deed of trust with Freemont as the beneficiary. The second note promised repayment to Majesty and was secured by a second deed of trust with Majesty as the beneficiary.

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Lyndes later filed for bankruptcy and the bankruptcy court permitted Majesty to foreclose on the second deed of trust. Majesty subsequently took the property via a trustee's deed following the foreclosure sale that specifically stated its interest was subject to the first deed of trust. Lyndes's personal liability for his debts was later discharged through the bankruptcy proceedings.

In 2000, Springleaf Financial Services (Springleaf), formerly known as American General Finance, obtained the promissory note and became the beneficiary of the first deed of trust by assignment. That same year, LB Investments, LLC, agreed to purchase the property from Majesty. Lopez, a member of LB Investments, took possession of the property and continued to make payments to the beneficiary of the first deed of trust until 2015. The beneficiary of the deed of trust for the majority of the relevant time period was Springleaf, and Lopez submitted payments to Springleaf. Lopez acknowledged that she received notices from Springleaf that were addressed to Lyndes but stated that she actually submitted the payments for the loan.

In 2014, respondent Nationstar Mortgage, LLC (Nationstar) became the servicer of the loan. The first deed of trust required the servicer to send notice to the borrower concerning that change and Nationstar mailed that notice to Lyndes. The notice explained that any payments made to Springleaf for a 60-day period would be forwarded to Nationstar but subsequent payments must be sent to Nationstar.

However, Lopez continued to send payments to Springleaf. Springleaf forwarded payments Lopez made between October 2014 and January 2015 to Nationstar, but Nationstar did not receive any additional payments after January 2015. In July of 2015, Lopez received a letter sent

by respondent National Default Servicing Corporation (NDSC) on behalf of Nationstar. The letter explained that Nationstar was the servicer of the loan and it had not received payments since January 2015, that Nationstar would proceed with foreclosure if it did not receive additional payments, and it included contact information for Nationstar. The letter further stated that the outstanding debt was $67,849.62. Lopez later acknowledged that she stopped submitting payments in July 2015. LB Investments mailed a letter to NDSC requesting additional information concerning the loan. However, NDSC informed LB Investments that the requested information was confidential and could not be provided to it as LB Investments was not a party to the promissory note. NDSC did, however, provide LB Investments with a copy of the first deed of trust and a list of liens and encumbrances for the property.

Respondent U.S. Bank National Association (U.S. Bank) later obtained the promissory note and became the beneficiary of the first deed of trust by assignment from Springleaf. And NDSC became the trustee of the first deed of trust.

In light of a provision in the first deed of trust that permitted the lender or its agents to make "reasonable entries upon and inspections of the Property," Nationstar contracted with respondent Solutionstar Holdings, LLC (Solutionstar) to inspect the property and ascertain if it was vacant. Solutionstar in turn contracted with respondent Assurant Field Asset Services, Inc. (AFAS), who further contracted with a field inspector to conduct the inspection. The field inspector left a notice on the door of the property stating that an inspection was performed, that the property appeared to be vacant or abandoned, and that the mortgage holder may have the property secured and/or winterized. The notice also provided a

phone number to call if the property was not actually vacant or abandoned. AFAS subsequently sent a report to Solutionstar indicating that the property was vacant, as the yard was dead and the utilities were off. Solutionstar subsequently directed AFAS to conduct an inspection of the interior of the home and AFAS contracted with a different field inspector. AFAS specifically instructed the inspector that, should the property appear to be occupied, it should take a photo of the front of the home and call the property coordinator. AFAS further instructed the field inspector not to take any personal property.

The second field inspector subsequently entered the property, changed the locks, took photographs of the interior and exterior, and secured the property. Lopez returned to the property approximately one month later and believed that the property suffered damage and personal property had been removed.

On September 15, 2015, Nationstar caused NDSC to record a notice of default and election to sell under the first deed of trust. LB Investments later executed a quit claim deed transferring its interest in the property to LBB Investments, LCC (LBB Investments). And LBB Investments subsequently executed a quit claim deed transferring its interest in the property to Lopez, a member of LBB Investments. Lopez and LBB Investments (appellants) then filed a complaint, initiating the underlying action and raising claims based on the preceding facts. Appellants next filed a first amended complaint, and alleged the following: (1) U.S. Bank and NDSC committed breach of contract and breach of the implied covenant of good faith and fair dealing based on their actions concerning the note and the deed of trust, (2) U.S. Bank, NDSC, and Nationstar committed wrongful foreclosure, (3) respondents trespassed by

permitting an agent to wrongfully enter the home and cause damage, and (4) respondents committed conversion by permitting an agent to exert dominion and control by causing damage to personal property and removing personal property. Appellants also sought injunctive relief related to the foreclosure proceedings. Respondents answered the complaint and the district court issued an amended scheduling order on February 17, 2017, stating that May 5, 2017, was the final day to seek leave to amend the complaint and providing for the close of discovery on July 17, 2017.

On May 5, 2017, appellants filed a motion for leave to file a second amended complaint, which respondents opposed. Before the district court could resolve that motion, appellants filed a second amended complaint on September 5, 2017. Respondents moved to strike the second amended complaint and, on November 14, 2017, the district court granted the motion, over appellants' opposition. In so doing, the district court informed appellants they could file a new motion seeking leave to amend their complaint.

As the case proceeded, respondents filed motions for partial summary judgment as to appellants' claims of breach of contract and breach of the implied covenant of good faith and fair dealing, which appellants opposed. The district court subsequently granted those motions, concluding that appellants were unable to establish that they were in privity of contract with respondents or that they were otherwise entitled to benefit from the note and the first deed of trust.

Appellants subsequently moved for partial summary judgment concerning their wrongful foreclosure claim and respondents filed a cross motion requesting summary judgment in their favor on that claim. The district court denied appellants' motion, but granted summary judgment in

favor of respondents as to the wrongful foreclosure issue. In so doing, the court concluded that the undisputed facts demonstrated that appellants were unable to establish the elements of a wrongful foreclosure claim.

On June 29, 2018, appellants again moved for leave to file a second amended complaint, which respondents opposed. The district court held a hearing concerning the motion on December 18, 2018. At the hearing, the district court explained that the amendment was untimely and it prejudiced respondents as it was filed well after the close of discovery and after summary judgment had been granted on the majority of appellants' claims. The district court subsequently entered a written order denying appellants' motion for leave to file a second amended complaint.

Respondents filed a motion for partial summary judgment as to the claims of trespass and conversion, which appellants opposed. The district court ultimately concluded that the undisputed facts demonstrated that respondents were entitled to summary judgment on the trespass claim because the first deed of trust permitted them to enter the property to inspect it. However, the district court concluded that disputed issues of fact remained concerning the conversion claim and denied summary judgment as to that issue. The parties subsequently settled that claim and stipulated to its dismissal with prejudice. This appeal followed.

Summary judgment

Appellants argue that the district court erred by granting summary judgment in favor of respondents concerning their breach of contract, breach of the implied covenant of good faith and fair dealing, wrongful foreclosure, and trespass claims. We discuss each of these issues below in turn.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show there exists no genuine dispute of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact." *Id.* at 603, 172 P.3d at 134.

Contract-based claims

Appellants contend that the district court erred by granting summary judgment in favor of U.S. Bank and NDSC on their claims of breach of contract and breach of the implied covenant of good faith and fair dealing. More specifically, appellants maintain that the district court erred by finding that the note was extinguished by Lyndes's bankruptcy proceedings and that they were therefore unable to assume the note. They further assert that the court erred by finding that they were not in privity of contract with U.S. Bank and NDSC and therefore they could not establish that those parties were liable based upon either breach of contract or breach of the implied convenient of good faith and fair dealing because both claims require the parties to have been in privity of contract.

Appellants' breach of contract and breach of the implied covenant of good faith and fair dealing claims required a showing that they were entitled to pursue relief under the note or the first deed of trust. *See Olson v. Iacometti*, 91 Nev. 241, 245–46, 533 P.2d 1360, 1364 (1975) (noting that a non-party to a contract must prove that "there was an intent" for that party to receive a benefit from a contract before the non-party may utilize the "exceptional privilege" of suing under breach of contract); *Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 541, 353 P.3d 1203, 1210 (2015) (stating that a breach of the implied covenant of good faith and fair dealing "can only occur when there is a special relationship between the parties"). Before the district court, appellants raised several theories under which they contended that they became parties to the note secured by the first deed of trust and were thus entitled to seek damages based upon the terms of the note and the first deed of trust.

First, appellants contend that Lyndes's contract-based rights under the note and first deed of trust were either assigned to them or that they assumed those rights by making the payments required by the note. "In the absence of statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment." *Easton Bus. Opportunities, Inc. v. Town Exec. Suites-E. Marketplace, LLC*, 126 Nev. 119, 127, 230 P.3d 827, 832 (2010) (quotation marks and brackets omitted). However, "[t]he assignor must manifest a present intention to transfer its contract right to the assignee." *Id.*; *see also Helix Elec. of Nev., LLC v. APCO Constr., Inc.*, Nos. 77320 & 80508, 2023 WL 2987662, at *4 (Nev. Apr. 17, 2023) (Order of Affirmance) (stating that for a valid assignment, "[t]he assignee must manifest assent to the assignment. And the assignor must manifest an intent to transfer the

right." (internal citation omitted) (citing Restatement (Second) of Contracts §§ 324, 327)). Moreover,

> the right to an assignment of a mortgage upon payment of the mortgage debt is generally denied a purchaser of the mortgaged premises who has assumed payment of the mortgage debt. On the grounds that his or her interest is amply protected by the discharge of the mortgage, it has also been held that a purchaser of property subject to a mortgage does not acquire a right to an assignment thereof on payment of the mortgage debt.

55 Am. Jur. 2d Mortg. § 1183 (footnotes omitted).

Appellants were not a party to the note or the first deed of trust that secured the note. Thus, for appellants to have been assigned Lyndes's contract-based rights, Lyndes must have manifested an intention to transfer those rights to appellants or their successor in interest and that such was permitted under the contract Lyndes had. *See id.* ("The mere fact that one occupies the position of purchaser of mortgaged property does not in the absence of other circumstances entitle the purchaser, on paying the indebtedness, to an assignment of the mortgage."). And here, there was no evidence presented that Lyndes intended to assign his contract-based rights to appellants or their predecessor in interest, LB Investments. Indeed, the record shows that LB Investments purchased the property from Majesty, which acquired it via a trustee's sale after it foreclosed on the second deed of trust. Both Majesty and LB Investments took the property subject to the first deed of trust, and there is nothing in the record to show any intent to assign any of his rights on Lyndes's part. Moreover, no evidence was produced that there was agreement for appellants to step into the place of Lyndes such that appellants were bound by the note and accepted personal liability under the note and first deed of trust and were also entitled to

benefits stemming from them. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (stating "[b]asic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration" and that an enforceable contract cannot be formed "unless the parties have agreed to all material terms"). Accordingly, there was no evidence showing a genuine dispute of fact as to whether Lyndes had assigned the contract rights under the note or the first deed of trust to appellants or that appellants agreed to an assignment of the burdens and obligations under the note or the first deed of trust. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, we conclude that appellants are not entitled to relief based on this claim.

Second, appellants contend that the actions of the parties ratified the contract. Specifically, they contend that U.S. Bank, NDSC, or their predecessors in interest accepting payments ratified the note such that appellants and their predecessor in interest, LB Investments, were substituted for Lyndes. "The doctrine of ratification by conduct . . . operates to make [a] contract legally valid." *Merrill v. DeMott*, 113 Nev. 1390, 1396-97, 951 P.2d 1040, 1044 (1997). Ratification in this fashion "is based on a theory of mutual assent." *Id.* at 1397, 951 P.2d at 1044. "Generally, contract ratification is the adoption of a previously formed contract, notwithstanding a quality that rendered it relatively void and by the very act of ratification the party affirming becomes bound by it and entitled to all proper benefits from it." *Id.* (quotation marks omitted).

Here, there was no previously formed contract between appellants and U.S. Bank and/or NDSC. Indeed, there was no contract between appellants and U.S. Bank and/or NDSC. Instead, there was a valid contract between Lyndes and Freemont, the original lender and U.S. Bank's

predecessor in interest. Moreover, no evidence was produced that there was mutual assent for appellants to step into the place of Lyndes such that appellants were bound by the note and first deed of trust and were entitled to benefits stemming from them. *See May*, 121 Nev. at 672, 119 P.3d at 1257. Accordingly, appellants failed to show there was a genuine dispute of fact as to whether the parties ratified the note and the first deed of trust such that appellants became a party to the agreement. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, we conclude that appellants are not entitled to relief based on this claim.

Third, appellants contend that the actions of the parties formed an implied contract through appellants' act of tendering payments under the note and U.S. Bank, NDSC, or their predecessors in interest accepting those payments. An implied contract "must be manifested by conduct" and "is a true contract that arises from the tacit agreement of the parties." *Certified Fire Prot. Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 379, 283 P.3d 250, 256 (2012) (internal quotation marks omitted). To form an implied contract, the parties must have intended to contract and exchanged promises, "the general obligations for which must be sufficiently clear." *Id.* at 379-80, 283 P.3d at 256.

Appellants' tender of payments and U.S. Bank, NDSC, or their predecessors in interest accepting those payments was insufficient to demonstrate that the parties intended to form a contract, that they exchanged promises, or that any of the predecessors in interest did so. *See id.; see also Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 235 (2012) ("A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite for a court to ascertain what is required of the respective parties and to compel compliance if necessary."

(internal quotation marks omitted)). Moreover, no evidence was produced that there was a tacit agreement between the parties for appellants to step into the place of Lyndes such that appellants were bound by the note and first deed of trust and accepted the burdens and obligations under the note and deed of trust, and were also entitled to benefits stemming from them. *See May*, 121 Nev. at 672, 119 P.3d at 1257. Accordingly, there was no evidence showing a genuine dispute of fact as to whether the parties formed an implied contract. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, appellants are not entitled to relief based on this claim.

Fourth, appellants contend that the parties enacted a novation based on appellants' act of tendering payments under the note and U.S. Bank, NDSC, or their predecessors in interest accepting those payments. A novation, or substituted contract, substitutes a new obligation for an existing one, "which thereby discharges the parties from all of their obligations under the former agreement inasmuch as such obligations are extinguished by the novation." *Lazovich & Lazovich, Inc. v. Harding*, 86 Nev. 434, 437, 470 P.2d 125, 127-28 (1970) (quoting *Williams v. Crusader Disc. Corp.*, 75 Nev. 67, 70, 334 P.2d 843, 845 (1959)). "A novation consists of four elements: (1) there must be an existing valid contract; (2) all parties must agree to a new contract; (3) the new contract must extinguish the old contract; and (4) the new contract must be valid." *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 508, 780 P.2d 193, 195 (1989). "[T]he party asserting novation has the burden of" proof concerning the elements of a novation. *Id.* at 509, 780 P.2d at 196. "In order to constitute a valid novation . . . the creditor must assent to the substitution of a new obligor, but this assent may be inferred from his acceptance of part performance by the new obligor, if the performance is made with the understanding that a

complete novation is proposed." *Jacobson v. Stern*, 96 Nev. 56, 61, 605 P.2d 198, 201 (1980).

There was no evidence that U.S. Bank, NDSC, or their predecessors in interest assented to a complete novation or that appellants' made payments with the intent to be personally liable for the note. *See Jacobson*, 96 Nev. at 61, 605 P.2d at 201. Moreover, no evidence was produced that all parties agreed for appellants to step into the place of Lyndes such that appellants were bound by the note and first deed of trust and were entitled to benefits stemming from them. *See United Fire Ins. Co.*, 105 Nev. at 508, 780 P.2d at 195; *see also May*, 121 Nev. at 672, 119 P.3d at 1257 (explaining that an enforceable contract cannot be formed "unless the parties have agreed to all material terms"). Under these circumstances, U.S. Bank, NDSC, or their predecessors in interests' mere acceptance of payments from appellants alone cannot be sufficient to demonstrate that a novation occurred, as a novation requires that all of the parties agree to a new contract, including that there was a clear intent for the parties to enact a complete novation. *See United Fire Ins. Co.*, 105 Nev. at 508, 780 P.2d at 195; *see also Pink v. Busch*, 100 Nev. 684, 690, 691 P.2d 456, 460 (1984) (stating "to constitute a valid novation, however, the creditor must assent to the substitution of a new obligor, but this assent may be inferred from his acceptance of part performance by the new obligor, if the performance is made with the clear understanding that a complete novation is proposed" (quotation marks, brackets, and emphasis omitted)). Accordingly, there was no evidence showing a genuine dispute of fact as to whether the parties formed a novation. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, we conclude that appellants are not entitled to relief based on this claim.

Fifth, appellants argue that U.S. Bank, NDSC, and their predecessors in interest waived their ability to challenge appellants' assumption of benefits and obligations under the note and the first deed of trust. Appellants contend that the parties knew that appellants took possession of the property and assumed the note, and that U.S. Bank and/or NDSC or their predecessors' corresponding failure to challenge appellants' assumption of the note constituted a waiver of U.S. Bank and/or NDSC or their predecessors' ability to contend that they did not assume the note. Appellants' argument as to waiver is predicated upon their contention that they assumed the note. For a valid waiver to have occurred, appellants had to show that U.S. Bank and/or NDSC or their predecessors in interest intentionally relinquished a known right under the note or the first deed of trust. *See Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984).

However, as explained previously, there was no evidence that Lyndes assigned the contract rights under the note to appellants and, thus, appellants' contention that U.S. Bank and/or NDSC or their predecessors in interest waived any ability to challenge an assignment fails. Moreover, appellants provided no evidence that respondents intentionally relinquished any known rights under the note or first deed of trust. Accordingly, there was no evidence showing a genuine dispute of fact as to whether U.S. Bank and/or NDSC or their predecessors waived any of their contractual rights. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, we conclude that appellants are not entitled to relief based on this claim.

Finally, appellants assert that the district court did not consider or review their contract-based claims because it improperly concluded that Lyndes' bankruptcy discharged the note when they contend

that only Lyndes's personal liability was discharged through the bankruptcy proceedings. But appellants' argument is misplaced as the district court did not make any such finding. When the district court's findings are reviewed in their totality, the court found "the parties agree that the bankruptcy court discharged the borrower on the note," and that "[a]s a result of the bankruptcy, Lyndes' obligations under the loan secured by the deed of trust were discharged" such that Lyndes had no personal liability beyond what had been secured by the deed of trust, and not that the note itself was discharged. And, importantly, the district court considered and rejected all of appellants' contract-based claims on their merits. As discussed previously, appellants' contract-based claims fail such that the court appropriately granted summary judgment in favor of the respondents. Accordingly, we conclude that appellants are not entitled to relief based on this claim.

Equitable estoppel

Next, appellants argue that they should be entitled to the benefits under the note based on the doctrine of equitable estoppel. Appellants contend that U.S. Bank, NDSC, and their predecessors in interest induced them to believe that they assumed the note by accepting payments and permitting them to possess the property until 2015.

"Equitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." *In re Harrison Living Tr.*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-62 (2005) (quotation marks omitted). Equitable estoppel consists of the following elements:

> (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party

> asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

Id. at 223, 112 P.3d at 1062 (quoting *Cheqer, Inc. v. Painters & Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)). "[E]stoppel requires a clear showing that the party relying upon it was induced by the adverse party to make a detrimental change in position, and the burden of proof is upon the party asserting estoppel." *Nev. State Bank v. Jamison Fam. P'ship*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990). "[W]hen the facts are undisputed or when only one inference can be drawn from the facts, then the existence of equitable estoppel becomes a question of law." *In re Harrison Living Tr.*, 121 Nev. at 222, 112 P.3d at 1061.

The evidence presented demonstrated that respondents were not apprised of the true facts concerning appellants supposed intention to assume the note and the deed of trust. Indeed, the evidence demonstrated that there was little communication between the parties before respondents notified appellants that they had not received payments in 2015. In addition, there was no evidence that respondents intended for appellants to perform actions or that appellants relied upon the respondents' behavior to their detriment, as the evidence established that appellants took their interest in the property with the knowledge that it was subject to a mortgage. Because the undisputed facts demonstrated that appellants did not meet their burden of proof as to equitable estoppel, we therefore conclude that appellants are not entitled to relief based on this claim.

Wrongful foreclosure

Next, appellants argue that the district court erred by deciding that U.S. Bank, Nationstar, and NDSC were entitled to summary judgment concerning their wrongful foreclosure claim. To prevail on a wrongful foreclosure claim, a plaintiff must prove that the foreclosing party did not have a legal right to foreclose upon the property. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983). "Therefore, the material issue of fact in a wrongful foreclosure claim is whether the trustor was in default when the power of sale was exercised." *Id.* If the plaintiff does not or cannot demonstrate that the loan was not in default, then it cannot prevail on a tort claim for wrongful foreclosure. *See In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 785 (9th Cir. 2014); *see also Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1044 (9th Cir. 2011) (holding that plaintiffs, whose homes were in default, could not state a claim for wrongful foreclosure).

Here, appellants failed to establish that the note was not in default. Rather, the evidence establishes that Nationstar did not receive multiple payments prior to initiating foreclosure proceedings, including several months after which appellants acknowledged that they had notice that Nationstar had not received the required payments. Thus, appellants failed to fulfill a preliminary condition for a wrongful foreclosure claim. *See Collins*, 99 Nev. at 304, 662 P.2d at 623. Because the undisputed facts show that appellants could not demonstrate the necessary elements of wrongful

foreclosure, we conclude that appellants are not entitled to relief based on this claim.[1]

Trespass

Next, appellants argue that the district court erred by deciding respondents were entitled to summary judgment concerning their trespass claim. "To maintain a trespass action, the plaintiff must demonstrate that the defendant invaded a property right." *Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 460 (Ct. App. 2022) (citing *Lied v. Clark Cnty.*, 94 Nev. 275, 279, 579 P.2d 171, 173-74 (1978)). "A contract is a defense in an action for trespass for acts done under it, provided the contract [is] valid and lawful." 87 C.J.S. Trespass § 49 (2023); *see also Winchell v. Schiff*, 124 Nev. 938, 947-48, 193 P.3d 946, 952 (2008) (stating that a tenant may not maintain a trespass action against a landlord when the "landlord has reserved a right of entry into the leased premises").

The evidence demonstrated that appellants purchased the property subject to the first deed of trust. And the first deed of trust specifically permitted the lender or its agent to "make reasonable entries upon and inspections of the property." U.S. Bank, Nationstar and NDSC were thus entitled under the express provisions of the first deed of trust to enter the property to conduct an inspection.

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[1]Appellants' request for injunctive relief was tied to their wrongful foreclosure claim. And because we conclude the district court properly granted summary judgment on that claim, it necessarily did not abuse its discretion in denying appellants' request for injunctive relief. *Chateau Vegas Wine, Inc. v. S. Wine & Spirits of Am., Inc.*, 127 Nev. 818, 824, 265 P.3d 680, 684 (2011), as corrected on denial of reh'g (Apr. 17, 2012).

And appellants "provided no evidence suggesting that [respondents' or the independent contractors'] entry was not for the exclusive purpose of inspecting the [property]." *See Winchell*, 124 Nev. at 948, 193 P.3d at 952. Because the undisputed facts show that appellants could not demonstrate the necessary elements of trespass, we conclude that appellants are not entitled to relief based on this claim.

Motion for leave to file a second amended complaint

Next, appellants argue that the district court abused its discretion in denying their motion for leave to file a second amended complaint. "A motion for leave to amend is left to the sound discretion of the trial judge, and the trial judge's decision will not be disturbed absent an abuse of discretion." *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). "Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Moreover, "[l]eave to amend . . . should not be granted if the proposed amendment would be futile." *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017) (internal quotation marks omitted).

After the district court struck appellants' amended complaint filed on September 5, 2017, which was filed without leave to amend having been granted, it informed them at a hearing conducted on December 14, 2017, that they could file a renewed motion for leave to amend the complaint. Appellants subsequently filed a motion for leave to file a second amended complaint on June 28, 2018. In their motion, appellants contended that they were not responsible for any delay and asserted that

respondents would not be prejudiced if they were granted leave to amend their complaint.[2]

At the hearing on the motion, the district court noted that discovery had closed and, if it were to allow the amendment, it would have to permit the parties to conduct more discovery, which could cause substantial delays. As a result, the court found that appellants' amendment request was untimely. In addition, the court found that amendment would be futile, as it had already granted summary judgment in favor of respondents concerning appellants' contract-based and wrongful foreclosure claims. The court further noted that the parties had fully briefed the motions for summary judgment concerning the trespass and conversion claims, and that it was preparing an order concerning summary judgment as to the trespass claim but that trial would be set for the conversion claim. Based on the forgoing reasons, the district court denied the motion for leave to amend.

Here, appellants offered no explanation for their extensive delay in seeking to file a second amended complaint after the close of discovery. Moreover, as the district court found, respondents would have been prejudiced by further delays caused by additional discovery, as appellants sought to amend the complaint almost one year after the close of discovery. *See Kantor*, 116 Nev. at 891, 8 P.3d at 828 (stating a sufficient

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[2]In their proposed second amended complaint, appellants sought to raise the following claims: trespass, trespass to chattel, conversion, estoppel, unjust enrichment, waiver, unfair or deceptive trade practices, wrongful foreclosure, violations of federal law governing REMIC trusts, civil conspiracy, slander of title, false representations concerning title, cancellation of instrument, and injunctive relief.

reason "to deny a motion to amend a pleading include[s] undue delay"). Further, the district court had already granted summary judgment as to the majority of appellants' claims, and a "last-second amendment" in an attempt to avoid summary judgment is not a proper purpose for an amendment. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Ct. App. 2015). Under these circumstances, we discern no abuse of discretion in the denial of appellants' motion to amend.

Based on the reasoning set forth above, we affirm the district court's decisions granting summary judgment to respondents on appellants' claims. We further affirm the court's denial of appellants' motion to file a second amended complaint.

It is so ORDERED.

_______________, C.J.
Gibbons

_______________, J.
Bulla

_______________, J.
Westbrook

cc: Hon. Leon Aberasturi, District Judge
Lori A. Yott, Settlement Judge
Bradley Paul Elley
Hutchison & Steffen, LLC/Las Vegas
Troutman Pepper Hamilton Sanders LLP/Atlanta
Troutman Pepper Hamilton Sanders LLP/Las Vegas
Kravitz Schnitzer Johnson Watson & Zeppenfeld, Chtd.
Tiffany & Bosco, P.A./Las Vegas
Ghidotti Berger LLP/Las Vegas
Springel & Fink, LLP
Third District Court Clerk