


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEWREZ LLC F/K/A NEW PENN
FINANCIAL, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING,
Appellants,
vs.
5008 SIGNAL DRIVE TRUST, A
NEVADA TRUST,
Respondent.

No. 87637-COA

FILED

MAR 04 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Newrez LLC F/K/A New Penn Financial, LLC D/B/A Shellpoint Mortgage Servicing (Shellpoint) appeals from a district court order granting a motion for preliminary injunction in a real property action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). Through its foreclosure agent, the HOA initiated nonjudicial foreclosure proceedings to collect on the past due assessments and other fees pursuant to NRS Chapter 116, which resulted in a foreclosure sale of the property to respondent 5008 Signal Drive Trust (SDT). The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2006-OA18, Mortgage Pass-Through Certificates, Series 2006-OA18 (BNYM), which was the beneficiary of the first deed of trust on the property, commenced a quiet title action against SDT in the United States District Court for the District of Nevada. In that proceeding, the federal court entered summary judgment in favor of BNYM, finding that its deed

of trust survived the foreclosure sale and that SDT took title to the property subject to the deed of trust. *Bank of N.Y. Mellon v. Dunbar*, No. 2:17-cv-00544-APG-DJA, 2020 WL 3414678, at *3 (D. Nev. June 22, 2020). The United States Court of Appeals for the Ninth Circuit affirmed that decision. *Bank of N.Y. Mellon v. 5008 Signal Drive Tr.*, No. 20-16388, 2021 WL 5823708, at *2 (9th Cir. Dec. 8, 2021).

By that time, the loan secured by the deed of trust had long been delinquent, and because SDT did not satisfy the delinquency, the trustee of the deed of trust, Prestige Default Services, LLC (Prestige), commenced nonjudicial foreclosure proceedings against the subject property by recording a notice of default. This prompted SDT to bring the underlying state court action against Prestige and the servicer of BNYM's deed of trust, Shellpoint. In its complaint, SDT alleged that the deed of trust and assignment of the beneficial interest in the deed of trust to BNYM¹ had never been recorded against the property. As a result, SDT maintained that the deed of trust could not be enforced against it under NRS 111.325 (providing that unrecorded conveyances are void against subsequent recorded conveyances to bona fide purchasers for value). And regardless, SDT argued that, absent an assignment of the deed of trust to BNYM recorded against the property, Prestige and Shellpoint were precluded from proceeding with a foreclosure sale under NRS 106.210(1) ("If the beneficial interest under a deed of trust has been assigned, the trustee under the deed

¹We recognize that SDT alleged below that the purportedly unrecorded assignment at issue in this case was from the original beneficiary to Prestige rather than BNYM. However, before the district court, Shellpoint produced a copy of the assignment, which was from the original beneficiary to BNYM. And, on appeal, SDT concedes that the assignment of the beneficial interest was to BNYM.

of trust may not exercise the power of sale pursuant to NRS 107.080 unless and until the assignment is recorded . . ."). From there, SDT sought a declaratory judgment consistent with the foregoing as well as a permanent injunction enjoining Prestige and Shellpoint from taking any action affecting its interest in the property.

SDT subsequently moved for a preliminary injunction, arguing that the factors for evaluating whether such relief is warranted weighed in its favor. Most notably, SDT maintained that it had a reasonable likelihood of success on the merits of its claims, reiterating the theories presented in its complaint and further alleging that a notice of default had not been recorded against the property and that Prestige and Shellpoint were therefore precluded from proceeding with a foreclosure sale under NRS 107.080(2)(b) (generally prohibiting the trustee of a deed of trust from exercising its power of sale until a notice of default is recorded in the county where the property is located). Shellpoint disagreed in its opposition,² arguing that insofar as SDT was challenging the enforceability of the deed of trust, SDT's claims could have been brought in the prior federal court action and were therefore barred by the doctrine of claim preclusion. Moreover, Shellpoint explained that the deed of trust, assignment, and

²The district court docket sheet indicates that Prestige filed a declaration of nonmonetary status to which SDT objected. See NRS 107.029(1), (5) (authorizing a trustee of a deed of trust who is named in an action concerning the deed of trust "solely in his or her capacity as trustee" to file a declaration of nonmonetary status, which relieves the trustee of the obligation to further participate in the action, provided that the district court determines that any objections are invalid). Based on the district court docket sheet, the district court has not ruled on SDT's objection to date, presumably because it granted SDT's motion for a preliminary injunction as discussed below. Thus, Prestige has not taken any further action in this case and is not a party to this appeal.

notice of default had all been recorded, although they incorrectly identified the subject property's assessor's parcel number (APN)³ as 125-46-815-025 when the property's actual APN was 125-46-813-025. And Shellpoint argued that use of the incorrect APN in the deed of trust, assignment, and notice of default did not preclude foreclosure because they were recorded in substantial compliance with the foreclosure statutes.

Following a hearing, the district court entered an order granting SDT's motion, finding that SDT had a reasonable likelihood of success on the merits of its claims under NRS 106.210(1) and NRS 107.080(2)(b) and that it would suffer irreparable harm if the injunction did not issue since a foreclosure sale would affect real property. This appeal followed.

As in the district court below, Shellpoint argues on appeal that SDT does not have a reasonable likelihood of success on the merits of its claims since they are barred by claim preclusion insofar as they challenged the enforceability of the deed of trust, and because the use of the incorrect APN in the recorded deed of trust, assignment, and notice of default did not preclude a foreclosure sale. On appeal, SDT abandons its argument concerning the enforceability of the deed of trust under NRS 111.325, emphasizing that the district court did not rely on that statute, but instead, looked to NRS 106.210(2) and NRS 107.080(2)(b), in concluding that STD had a reasonable likelihood of success on the merits of its claims. And STD reiterates its position that a foreclosure sale was prohibited under NRS

³An assessor's parcel number describes real property based on the parceling system prescribed by the Nevada Department of Taxation. NRS 361.189(1)(a).

106.210(1) and NRS 107.080(2)(b) because the assignment and notice of default purportedly were not recorded against the property.

This court generally reviews a district court order resolving a motion for a preliminary injunction for an abuse of discretion. *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015). But where a motion for injunctive relief presents a purely legal issue, such as the question of whether claim preclusion applies, our review is de novo. *Sowers v. Forest Hills Subdiv.*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013); *G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct.*, 127 Nev. 701, 705, 262 P.3d 1135, 1137 (2011). “A preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice.” *Excellence Cmty. Mgmt.*, 131 Nev. at 350-51, 351 P.3d at 722. When evaluating whether to issue a preliminary injunction, “courts also weigh the potential hardships to the relative parties and others, and the public interest.” *Univ & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

Initially, although SDT attempts to avoid Shellpoint’s claim preclusion argument by abandoning its claims insofar as they challenged the enforceability of the deed of trust under NRS 111.325, its efforts are partially unavailing. Indeed, while SDT maintains that a foreclosure sale is prohibited under NRS 106.210(1) because the assignment to BNYM purportedly was not recorded against the property, the assignment was recorded, although the document identified the property by the wrong APN. As a result, the theory underlying SDT’s claims under NRS 106.210 is essentially that a scrivener’s error in the assignment rendered its

recordation ineffective. Such a challenge goes to BNYM's authority, and by extension that of Prestige and Shellpoint, to enforce the deed of trust and could have been raised in the prior federal court action. And because that action involved the same parties or their privies as the present action and resulted in a valid final judgment, SDT's claims are barred by the claim preclusion doctrine to the extent they relate to NRS 106.210(1) and the assignment. *See Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) (explaining that claim preclusion applies when "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case").

Nevertheless, insofar as SDT brought its claims under NRS 107.080(2)(b) based on the theory that, although the notice of default was recorded, it was not recorded against the subject property since it listed the incorrect APN for the property, claim preclusion does not apply. Indeed, Prestige did not commence nonjudicial foreclosure proceedings on behalf of BNYM until after the prior federal court action concluded and, therefore, no claim concerning the notice of default could have been presented in that action. *See id.* Thus, we turn to Shellpoint's argument that SDT did not have a reasonable likelihood of success on the merits of its claims to the extent they fell under NRS 107.080(2)(b).

As mentioned above, that statute requires that a notice of default be recorded before a foreclosure sale may proceed. NRS 107.080(2)(b). However, the statute does not mandate that a notice of default include the APN of a property that will be subject to foreclosure. And while Nevada's recording statutes prohibit the county recorder from recording certain documents relating to real property if they do not set forth

the relevant property's APN, a notice of default is not one of the enumerated documents. *See* NRS 111.312(1) (listing the following documents as subject to the APN requirement: "a notice of completion, a declaration of homestead, a restrictive covenant modification form [or document], a lien or notice of lien, an affidavit of death, a mortgage or deed of trust, any conveyance of real property or instrument in writing setting forth an agreement to convey real property or a notice pursuant to NRS 111.3655"); *see also* NRS 111.010(1) (defining a "conveyance" as an "instrument in writing . . . by which any estate or interest in lands is created, aliened, assigned or surrendered"). And SDT has not otherwise directed this court's attention to any legal authority providing that a notice of default must include an APN or that the absence of one somehow renders the recording of a notice of default ineffective. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).


Moreover, even if the notice of default was required to include the property's APN, that is a form and content requirement that may be satisfied through substantial compliance. *See Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 718 (2007) (explaining that "time and manner requirements are strictly construed, whereas substantial compliance may be sufficient for form and content requirements" (internal quotation marks omitted)); *see also State, Dep't of Taxation v. Kawahara*, 131 Nev. 425, 428, 351 P.3d 746, 747 (2015) (providing that recording statutes generally require substantial compliance). "The usual purpose of recording or registration is to give persons subsequently dealing with the property notice of the existence of the lien." *State, Dep't of Taxation*, 131 Nev. at 428, 351 P.3d at 747-48. Here, although the notice of default listed the incorrect APN for the property, it included information sufficient to make it searchable in,

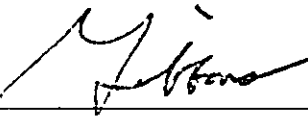
and retrievable from, the grantor-grantee indices maintained by the county recorder in accordance with NRS 247.150 for purposes of facilitating title searches. *See Adaven Mgmt., Inc. v. Mountain Falls Acquisition Corp.*, 124 Nev. 770, 778-79, 191 P.3d 1189, 1195 (2008) (discussing how to perform a title search using the grantor-grantee indices). The notice of default also included the property's street address and legal description, allowing for ready identification of the property covered by the notice of default notwithstanding the erroneous APN set forth therein, which by itself does not constitute a complete legal description even when accurate. *See* NRS 111.312(4) (providing that an APN "shall not be deemed to be a complete legal description of the real property conveyed").

Moreover, in the context of statutory notice requirements, the supreme court has held that substantial compliance is met "where actual notice occurs and there is no prejudice to the party entitled to notice." *See Schleining v. Cap One, Inc.*, 130 Nev. 323, 330, 326 P.3d 4, 8 (2014). Here, although SDT has expressed metaphysical doubts as to whether the notice of default would be retrievable in a title search, the record before this court includes documentation demonstrating that the notice of default was mailed to SDT. And SDT has never disputed that it received the notice of default—meaning that it had actual notice—or otherwise suggested that it was somehow prejudiced by the incorrect APN set forth therein. *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."); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Thus, in light of the foregoing, we conclude that Prestige substantially complied with Nevada's recording and foreclosure statutes when it recorded the notice of default. Thus, SDT had no likelihood of success on the merits of its claims to the extent it challenged whether a foreclosure sale was prohibited under NRS 107.080(2)(b). And while SDT argues, and the district court found, that SDT would suffer irreparable harm absent the issuance of an injunction enjoining the foreclosure sale, neither that factor nor the remaining considerations relevant to requests for preliminary injunctions outweigh the lack of a likelihood of success on the merits of SDT's claims. *See S. Glazer's Distributors of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017) ("[A] preliminary injunction issued where there is simply no likelihood of success on the merits must be reversed." (internal quotation marks omitted)). Thus, we conclude that the district court abused its discretion by granting SDT's motion for a preliminary injunction. *See Excellence Cmty. Mgmt., LLV v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Akerman LLP/Las Vegas
Natalie L. Winslow
Hong & Hong
Eighth District Court Clerk