IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE FALLS PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 88660-COA

FILED
JUL 24 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

The Falls Properties, LLC (TFP) appeals from a district court order granting a motion to dismiss in an action to quiet title. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge.

TFP sued respondent Newrez LLC d/b/a Shellpoint Mortgage Servicing (Shellpoint) for quiet title, declaratory judgment, wrongful foreclosure, and a violation of NRS 107.028. TFP alleged that it was the owner of the relevant property and that a deed of trust encumbered the property. TFP further alleged that the deed of trust had been extinguished as a matter of law under NRS 106.240. That statute provides that a lien on real property is conclusively presumed to be discharged "10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become[s] wholly due." NRS 106.240. According to TFP, Shellpoint's interest in the subject property was extinguished under NRS 106.240, which was triggered by an alleged notice of intent to accelerate the underlying debt in a letter sent to the original

borrower in 2013. TFP also asserted that the note and deed of trust had been split and not reunified, and contended Shellpoint wrongfully sought to foreclose on the property. In addition, TFP asserted Shellpoint violated NRS 107.200 et seq. because it contended Shellpoint failed to provide information concerning the debt secured by the deed of trust.

Shellpoint later filed a motion to dismiss, asserting the facts as alleged were insufficient to state a claim for which relief could be granted. Shellpoint contended, among other things, that none of the events discussed in TFP's complaint triggered NRS 106.240's ten-year period, and thus NRS 106.240 did not extinguish the deed of trust. Shellpoint further asserted that it was the beneficiary of the deed of trust and possessed the promissory note such that the note and the deed of trust were reunified and asserted TFP's wrongful foreclosure claim lacked merit. In addition, Shellpoint contended TFP's allegations concerning its NRS 107.200 et seq. claim were insufficient to state a valid claim.

TFP opposed the motion, arguing that it had provided sufficient allegations to state a claim as to each of its causes of action. Shellpoint subsequently filed a reply in support of the motion. The parties later agreed to stipulate that Shellpoint was the beneficiary of the deed of trust and possessed the note and therefore, they agreed to dismiss TFP's claim concerning the alleged split of the promissory note and the deed of trust.

The district court ultimately issued a written order granting the motion to dismiss. The court ruled the plain language of NRS 106.240 precluded events, such as the ones alleged in TFP's complaint, from

triggering the ten-year period under NRS 106.240.[1] Further, the court concluded that TFP's NRS 107.200 et. seq. claim lacked merit. The court also determined that TFP was not entitled to relief as to any of its remaining claims. This appeal followed.

On appeal, TFP challenges the district court's order granting the motion to dismiss. We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff's factual allegations as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

Because Nevada is a "notice-pleading" jurisdiction, *see* NRCP 8(a), a complaint need only set forth a short and plain statement with sufficient facts to demonstrate the necessary elements of a claim for relief so that the opposing party "has adequate notice of the nature of the claim

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[1]As TFP referred to the deed of trust in the operative complaint and the terms of the deed of trust were central to its allegations, and no party questioned the authenticity of the deed of trust which was attached to the motion to dismiss, it was appropriate for the district court to review the deed of trust when granting the motion to dismiss. *See Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (explaining that when a district court evaluates a motion to dismiss, it can "consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document" (internal quotations omitted).

and relief sought." *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (discussing Nevada's liberal notice pleading standard). We "liberally construe pleadings to place matters into issue which are fairly noticed to an adverse party." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (citation omitted).

First, TFP argues the district court erred by dismissing its NRS 106.240 claim because it contends that the terms of the deed of trust permitted acceleration of the loan, the lender sent the original borrower a notice indicating the acceleration of the loan secured by the deed of trust more than ten years ago and, because the loan was accelerated, the deed of trust that secured that debt became extinguished pursuant to NRS 106.240.

NRS 106.240, Nevada's ancient-lien statute, provides that a lien created by a mortgage or deed of trust that has not been otherwise satisfied will be presumed discharged ten years after the debt becomes wholly due. A debt becomes "wholly due" according to either (1) the terms in the mortgage or deed of trust, or (2) any recorded, written extension of those terms. *LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev. 232, 236, 534 P.3d 693, 697 (2023); *Posner v. U.S. Bank Nat'l Assn*, 140 Nev., Adv. Op. 22, 545 P.3d 1150, 1153 (2024). For a deed of trust to be presumed satisfied for the purposes of NRS 106.240, "ten years [must] have passed after the last possible date the deed of trust is in effect, as shown by the maturity date on the face of the deed of trust or any recorded extension thereof." *LV Debt Collect*, 139 Nev. at 238, 534 P.3d at 699. The supreme court also explained that, even if a notice provided to the borrower indicating a default in certain circumstances could render a loan wholly due, a notice that declared sums were due and payable but also provided

the borrower with the opportunity to cure the default constituted the sort of conflicting language that did not amount to a clear and unequivocal announcement of the lender's intention to declare a debt wholly due. *Id.* at 238-39, 534 P.3d at 699.

Here, because the terms of the deed of trust did not render the debt wholly due upon the original borrower's default and allowed the opportunity for the borrower to cure the default, NRS 106.240's ten-year period was not triggered by either the default or any purported lender's letter concerning the default. To the extent TFP relies on the acceleration clause contained in the deed of trust and asserts that this clause made the debt wholly due, we are not persuaded by this argument because the borrower retained the option under the deed of trust to reinstate the loan to good standing. *See Norman, LLC v. Newrez LLC*, No. 87545, 2024 WL 5086198, at *1 (Nev. Dec. 11, 2024) (Order of Affirmance) (stating that merely defaulting on a loan is insufficient to trigger NRS 106.240); *Big Rock Assets Mgmt., LLC v. Newrez LLC*, No. 86675, 2024 WL 4865435, at *2 (Nev. Nov. 21, 2024) (Order of Affirmance) (explaining that "the filing of a notice of default may not automatically accelerate a loan, because NRS 107.080(2)-(3) requires a notice of default to give a borrower thirty-five days to cure, which is antithetical to an acceleration"); *RH Kids, LLC v. Specialized Loan Servicing, LLC*, No. 87701-COA, 2025 WL 365736, at *3 (Nev. Ct. App. Jan. 31, 2025) (Order of Affirmance) (rejecting appellant's argument that the debt secured by the deed of trust became wholly due more than ten years ago because the terms of the deed of trust permitted acceleration of the loan and a notice was sent indicating acceleration of the loan). Thus, we conclude that, under the language of the deed of trust, neither the default nor the letter could have accelerated the due date on the loan, and thus the ten-year

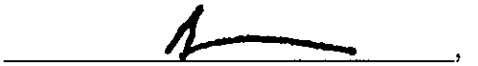
period under NRS 106.240 was not triggered. Therefore, TFP fails to demonstrate that it is entitled to relief based on this argument.

Second, TFP contends the district court erred by dismissing its NRS 107.200 et seq. claim. NRS 107.200 provides that "the beneficiary of a deed of trust . . . shall, within 21 days after receiving a request from a person authorized to make such a request . . . cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement regarding the debt secured by the deed of trust." In addition, NRS 107.270 states that the request for a statement regarding the debt "must be made to the address to which the periodic payments under the note are made. If no periodic payments are made under the note, the request must be mailed to the address of the beneficiary listed on the note or deed of trust." NRS 107.300 imposes liability when a lender "willfully fails" to provide certain payoff information as provided in NRS 107.200.

Here, TFP did not allege that it mailed a request to the address of the beneficiary of the deed of trust listed on the note or the deed of trust, or that it mailed such a request to the address to which periodic payments under the note were made. Rather, TFP alleged that it mailed the request to a different entity, the trustee of the deed of trust, and not to Shellpoint as the beneficiary of the deed of trust. Based on those allegations, TFP failed to sufficiently allege that it properly made a request to Shellpoint for a statement regarding the debt under NRS 107.200. Because TFP failed to allege that it properly requested a statement regarding the debt from

Shellpoint, we conclude that the district court did not err by dismissing this claim.[2] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]



_____, C.J.
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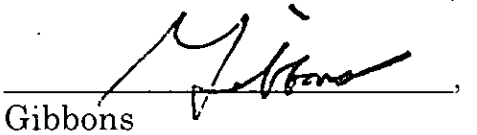

_____, J.
Gibbons

_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Michael A. Cherry, Senior Justice
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

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[2]TFP does not challenge the district court's decision to dismiss any of the other claims raised in its complaint. As a result, TFP has forfeited any argument related to the same. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived).

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.