IN THE SUPREME COURT OF THE STATE OF NEVADA

7963 LAURENA AVENUE TRUST,
Appellant,
vs.
THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-AB4,
Respondent.

No. 69052

FILED

OCT 17 2016

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order, certified as final under NRCP 54(b), granting a motion to dismiss in a quiet title action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The district court dismissed appellant's complaint under NRCP 12(b)(5) and denied leave to amend, reasoning that any amendments would be futile. On appeal, appellant contends that it should have been permitted to amend its complaint to include an allegation that the language in its deed conveying only the HOA's subpriority interest was a mistake and to include a request for equitable reformation. Because these amendments could potentially entitle appellant to relief vis-à-vis respondent, we conclude that the district court abused its discretion in

denying leave to amend based on futility.[1] *See Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993) (reviewing for an abuse of discretion a district court's denial of leave to amend); *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev., Adv. Op. 42, 302 P.3d 1148, 1152 (2013) (explaining that leave to amend a complaint should be denied if the proposed amendment would be futile but that otherwise "leave to amend a complaint shall be 'freely given when justice so requires'" (quoting NRCP 15(a))); *see also Nutton v. Sunset Station, Inc.*, 131 Nev., Adv. Op. 34, 357 P.3d 966, 973, 975 (Ct. App. 2015) ("[R]ule 15's policy of favoring amendments to pleadings should be applied with extreme liberality and amendment is to be liberally granted where . . . the plaintiff may be able to state a claim" sufficient to survive NRCP 12(b)(5) dismissal (quotation omitted)); *cf. Grappo v. Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994) ("Reformation is based upon equitable principles, applied when a written instrument fails to conform to the parties' previous understanding or agreement."); *Wainwright v. Dunseath*, 46 Nev. 361, 366-67, 211 P. 1104, 1106 (1923) ("[C]ourts of equity have the power to order the reformation of deeds, contracts, and other instruments, when, through mistake of the parties thereto . . . such instrument does not contain the real terms of the contract between them.").

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[1]We are not persuaded by respondent's suggestion that reformation is unavailable because the purportedly mistaken language in the deed constituted an "error of law," as opposed to an "error of fact." In particular, but among other reasons, appellant's proffered new allegation appears to implicate at least one error of fact: whether the HOA's lien included assessments for common expenses based on the HOA's periodic budget.

Because our above conclusion provides a sufficient basis for reversal, we need not consider whether appellant's original complaint was sufficient to survive NRCP 12(b)(5) dismissal. Accordingly, we

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

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Thomas J. Tanksley, Settlement Judge
The Dean Legal Group, Ltd.
Brooks Hubley LLP
Eighth District Court Clerk