

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARGO NEVADA, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
BAYVIEW LOAN SERVICING, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 71215

FILED

AUG 27 2018

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

ORDER OF AFFIRMANCE

Argo Nevada, LLC, appeals from a district court order granting a motion to dismiss for failure to state a claim in a real property action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Argo purchased property subject to a first deed of trust at a bankruptcy trustee sale. Respondent Bayview Loan Servicing, LLC, was the loan servicer for the deed of trust beneficiary. When the deed of trust owner sought to foreclose its interest on the subject property, Argo sued for declaratory relief, injunctive relief, and unjust enrichment. Argo later amended its complaint to name Bayview, as the loan servicer to the deed of trust beneficiary. Bayview filed a motion to dismiss the amended complaint which the district court granted. This appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under

NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complaint. *Id.* Dismissing a complaint is appropriate “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. All legal conclusions are reviewed de novo. *Id.*

Our review of the record supports the district court’s decision dismissing Argo’s complaint against Bayview. *Id.* at 227-28, 181 P.3d at 672. Argo’s complaint sought to enjoin Bayview from completing a foreclosure of the property Argo claimed an interest in that was subject to Bayview’s first deed of trust. Bayview, however, argues that Argo failed to timely record its interest in the subject property pursuant to an order from the bankruptcy court, rendering Argo’s interest void.¹ We agree with the

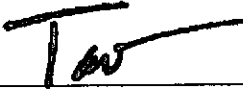
¹Argo argues that it was improper for the district court to consider the bankruptcy order or other documents outside the complaint. *See* NRCP 12(b)(5) (restricting motions to dismiss for failure to state a claim to matters presented in the complaint). But Argo attached the bankruptcy order to the complaint, thereby incorporating it into the complaint. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (noting a court may take into account any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted). And the district court order at issue in this case only references the bankruptcy order. As such, there is no reason to treat this decision under the NRCP 56 standard and require the order to set forth undisputed material facts and legal determinations on which the court ruled. *See* NRCP 56(c).

district court that failure to comply with the recording requirements eliminated Argo's interest in the subject property.² As such, the claims raised by Argo must fail. *Id.* at 228, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Janet Trost, Settlement Judge
Akerman LLP/Las Vegas
Argo Nevada, LLC
Eighth District Court Clerk

²We determine that the district court had jurisdiction to consider the effects of the bankruptcy order in the suit Argo commenced in the district court. *See Hinduja v. Arco Products Co.*, 102 F.3d 987, 989-90 (9th Cir. 1996) (noting that "the mere fact that a bankruptcy decree has issued" does not mean that only the bankruptcy court controls all further proceedings).