

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLENE ROGOFF,
Appellant,
vs.
REAL TIME RESOLUTIONS, INC.;
AND BANK OF AMERICA
CORPORATION,
Respondents.

No. 74148

FILED

OCT 15 2018

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

ORDER OF AFFIRMANCE

Marlene Rogoff appeals from a district court order dismissing her complaint with prejudice in a contract and tort action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Rogoff filed suit against respondents Real Time Resolutions, Inc. (RTR), and Bank of America, alleging intentional misrepresentation, negligence per se, predatory lending, and seeking rescission of a loan contract, all related to a second mortgage Rogoff took out on certain real property. Bank of America filed a motion to dismiss Rogoff's complaint, and RTR filed a joinder to Bank of America's motion. The district court granted the motion after determining that Rogoff's claims were time-barred, dismissing the entire complaint with prejudice. 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.*


On appeal, Rogoff asserts several supposed errors on the part of the district court. This court’s de novo review, however, determines that dismissal was proper. *Id.* at 227-28, 181 P.3d at 672. The claims that Rogoff raises all stem from her second mortgage, commenced in 2006, putting each and every claim outside the applicable statute of limitations, as argued below by Bank of America.¹ *See generally* NRS 11.190. Rogoff’s argument that the time to file was tolled is not well founded as factual allegations within Rogoff’s complaint, such as the receipt of statements immediately following the commencement of the subject loan, contradict her assertion that she was unaware of the facts relevant to her claims. *See Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) (discussing the claimant’s knowledge of the relevant facts as one of several nonexclusive factors to determine whether it would be just or fair to toll the statute of limitations). As such, we decline to apply the doctrine of equitable tolling here.²

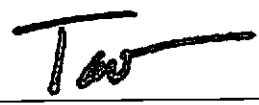
¹Rogoff asserts that RTR should not have been allowed to join Bank of America’s motion to dismiss because RTR had failed to timely respond to the first amended complaint. The record indicates, however, that Rogoff, through counsel, stipulated to extend RTR’s time to respond to Rogoff’s first amended complaint and that no default was entered against RTR, making the joinder proper.

²To the extent that the order does not specifically address the other alleged errors, we determine Rogoff’s arguments lack merit and are not grounds to reverse the dismissal.

Based on our review of the filings, we agree that no set of facts would entitle Rogoff to relief as pled. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Marlene Rogoff
Akerman LLP/Las Vegas
Dickinson Wright PLLC
Eighth District Court Clerk