

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

U.S. BANK, N.A., AS TRUSTEE FOR  
GSR MORTGAGE LOAN TRUST 2005-  
AR7,  
Appellant,  
vs.  
RODNEY HOLDINGS, LLC,  
Respondent.

No. 68892

FILED

DEC 28 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court decision certified as a final judgment under NRCP 54(b). Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In the underlying action, respondent Rodney Holdings, LLC, served appellant U.S. Bank by serving the summons and complaint on the Nevada Secretary of State pursuant to NRCP 4(d)(2), which provides for service on an unregistered foreign entity in this manner. U.S. Bank failed to answer the complaint, and a default judgment was subsequently entered against it. Thereafter, U.S. Bank appeared and moved to set aside the default judgment, and the district court denied that motion. On appeal, U.S. Bank argues the district court abused its discretion by declining to set aside the default judgment under NRCP 60(c), which allows a court to set aside a default judgment when the party against whom it was entered was not personally served and timely moves to set it aside. *See Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990) (providing that a district court's decision regarding whether to set aside a default judgment is reviewed for an abuse of discretion), *overruled on other*

grounds by *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3, 218 P.3d 853, 857 n.3 (2009).

In particular, U.S. Bank recognizes that service through the Secretary of State may constitute personal service, but asserts that, under *Basf Corp., Inmont Division v. Jafbros, Inc.*, 105 Nev. 142, 771 P.2d 161 (1989), personal service was not accomplished in this case because there was no evidence that the Nevada Secretary of State forwarded the summons and complaint to U.S. Bank. *Basf* provides, however, that the party seeking to vacate a default judgment has the burden of showing that personal service was not accomplished. *Id.* at 144, 771 P.2d at 162.

Here, U.S. Bank did not argue below that service was incomplete under *Basf* and did not present any evidence to demonstrate that the Secretary of State had failed to forward the summons and complaint. Thus, we conclude that U.S. Bank waived its *Basf* argument,<sup>1</sup> see *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that a point not raised in the trial court “is deemed to have been waived and will not be considered on appeal”), and that the district court did not abuse its discretion in finding that U.S. Bank had failed to meet its burden to demonstrate that it was not personally served. See *Price*, 106 Nev. at 103, 787 P.2d at 787.

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<sup>1</sup>While an objection to the court’s subject matter jurisdiction may not be waived, see *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276, 44 P.3d 506, 515-16 (2002) (explaining that “subject matter jurisdiction cannot be waived and may be raised at any time”), the same is not true for personal jurisdiction. See *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000) (recognizing that parties can waive personal jurisdiction).

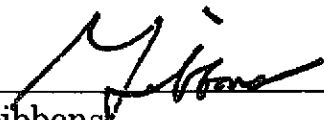
Next, U.S. Bank argues the district court should have set aside the default judgment because Rodney Holdings failed to exercise due diligence in attempting to locate U.S. Bank before effectuating service through the Secretary of State. NRCP 4(d)(2) provides that an unregistered foreign entity may be served within Nevada by delivering the summons and complaint to “an officer, general partner, member, manager, trustee or director” of the foreign corporation. If no such person is available “within this state,” then the entity may be served through the Secretary of State. NRCP 4(d)(1), (2).


U.S. Bank asserts that it could have been found at its headquarters, but its headquarters is located in Minnesota, rather than within this state, and thus, this argument does not demonstrate that service through the Secretary of State was improper under NRCP 4(d)(2), as this is the type of situation to which this rule is designed to apply. Moreover, U.S. Bank argues it could have been served through its servicer, which has a registered agent in Nevada, but U.S. Bank does not assert that its servicer is “an officer, general partner, member, manager, trustee or director” of U.S. Bank or that its servicer was otherwise specifically authorized to accept service on its behalf. *See Foster v. Lewis*, 78 Nev. 330, 333, 372 P.2d 679, 680 (1962) (“In the absence of actual specific appointment or authorization, and in the absence of a statute conferring authority, an agency to accept service of process will not be implied.”). Indeed, at no point has U.S. Bank identified any “officer,

general partner, member, manager, trustee or director” who could have been located within Nevada for the purpose of serving process.<sup>2</sup>

In light of the above, we conclude that U.S. Bank has not demonstrated that the district court abused its discretion by finding that Rodney Holdings conducted the due diligence necessary to serve U.S. Bank through the Secretary of State or by denying the motion to set aside the default judgment.<sup>3</sup> See *Price*, 106 Nev. at 103, 787 P.2d at 787. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>2</sup>Notably, although U.S. Bank suggests that Rodney Holdings could have attempted to locate it through one of its Nevada branches or by contacting its attorney, U.S. Bank does not assert that doing so would have allowed Rodney Holdings to locate a proper person to accept service for U.S. Bank within this state. And to the extent U.S. Bank argues Rodney Holdings should have contacted U.S. Bank’s counsel to see if counsel could accept service on U.S. Bank’s behalf, U.S. Bank raises this argument for the first time in its reply brief, and thus, we do not consider it. See *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011).

<sup>3</sup>To the extent U.S. Bank argues the judgment should have been set aside under NRCP 60(b), it did not raise this argument in the district court, and thus, we will not consider it on appeal. See *Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983.

cc: Hon. Douglas Smith, District Judge  
John Walter Boyer, Settlement Judge  
Wright, Finlay & Zak, LLP/Las Vegas  
The Law Office of Mike Beede, PLLC  
Eighth District Court Clerk