IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PREMIER ONE HOLDINGS, INC.,
Appellant,
vs.
BANK OF AMERICA, N.A., A NATIONAL ASSOCIATION,
Respondent.

No. 79596-COA

ORDER OF AFFIRMANCE

Premier One Holdings, Inc. (Premier), appeals from a district court order granting a motion for summary judgment, certified as final pursuant to NRCP 54(b), in an interpleader and quiet title action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

The original owner of the subject property failed to make periodic payments to his homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Premier purchased the property at the resulting foreclosure sale and filed a complaint (the first action) asserting claims for quiet title and cancellation of instruments against, among others, respondent Bank of America, N.A. (BOA)—the beneficiary of the first deed of trust on the property. Prior to our supreme court's holding in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014), that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust," the district court presiding over the first action dismissed Premier's claims against BOA with prejudice, concluding as a matter of law that the

foreclosure sale did not extinguish BOA's deed of trust. Later, two months after *SFR* was issued and after Premier failed to take any further action in the case, the district court dismissed the remainder of Premier's claims for want of prosecution. Premier did not appeal from that final judgment.

Meanwhile, the HOA's foreclosure agent had initiated the underlying interpleader action with respect to a different property. In this action, BOA sought to quiet title to that property against Premier, and Premier filed a counterclaim against BOA seeking to quiet title to that property and many others, including the subject property. Premier again asserted claims for quiet title and cancellation of instruments against BOA, and it also sought injunctive relief. Both BOA and Premier moved for summary judgment with respect to the subject property, and the district court ruled in favor of BOA, concluding that Premier's claims were barred under the doctrine of claim preclusion. Premier then filed a motion to alter or amend the judgment under NRCP 59(e), which the district court denied. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *see also Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 136 Nev., Adv. Op. 28, 464 P.3d 104, 107 (2020) (noting that whether claim preclusion applies is a question of law reviewed de novo). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

On appeal, Premier does not dispute that all of the elements of claim preclusion are satisfied. *See Weddell v. Sharp*, 131 Nev. 233, 241, 350

P.3d 80, 85 (2015) (setting forth the elements of claim preclusion). Rather, Premier contends that claim preclusion does not apply in this case because it was entitled to file a separate action seeking to have the final judgment from the prior case set aside, which is what it purports to have done in this matter. *See* NRCP 60(d)(1) (providing that NRCP 60 "does not limit a court's power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding"). It further contends that, under our supreme court's decision in *Boca Park Marketplace Syndications Group, LLC v. Higco, Inc.*, 133 Nev. 923, 407 P.3d 761 (2017), claim preclusion does not apply to this matter because the first action sought only declaratory relief. Finally, Premier contends that the doctrine of claim preclusion—even if it does bar Premier from asserting its claims in this matter—does not prevent it from defending against BOA's claims. We consider each of these arguments in turn.

With respect to Premier's first argument, assuming this action constitutes an independent action to obtain relief from the final judgment entered in the first action,[1] we disagree with Premier's contention that it is entitled to such relief. Although a litigant may obtain relief from a final judgment under NRCP 60(b) by way of an independent action, *Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 45 (1992), and although such actions are "not necessarily barred by [claim preclusion]," *Amie v. Amie*, 106 Nev. 541, 542, 796 P.2d 233, 234 (1990), determining whether to grant relief in spite of claim preclusion involves weighing the

[1]As argued by BOA, Premier did not expressly seek relief from the prior judgment in its counterclaim below; rather, it raised this issue for the first time in opposition to BOA's motion for summary judgment. However, in light of our disposition, we need not decide whether Premier sufficiently pleaded an independent action to set aside the prior judgment.

purposes of that doctrine against the policies furthered by granting relief. *Id.* at 543, 796 P.2d at 235; *see also Pickett*, 108 Nev. at 427, 836 P.2d at 45. And although the district court did not explicitly conduct this weighing analysis in its order, it nevertheless considered the parties' arguments under the appropriate authorities, and it stated that Premier's proper remedy would have been to file a motion under NRCP 60(b) in the first action or to appeal from the final judgment. It thereby implicitly concluded that the policies in favor of granting relief were outweighed by the purposes of claim preclusion, which is "designed to promote finality of judgments and judicial efficiency by requiring a party to bring all related claims against its adversary in a single suit, on penalty of forfeiture." *Boca Park*, 133 Nev. at 925, 407 P.3d at 763.

Premier fails to provide any argument on appeal as to how the district court erred or abused its discretion on this point. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument). Indeed, although Premier is correct that the dismissal of its claims against BOA in the first action was premised upon an erroneous, pre-*SFR* understanding of NRS Chapter 116, Premier fails to demonstrate how that error outweighs concerns of finality and judicial efficiency, especially in light of the fact that *SFR* was decided two months before the final judgment in the first action was entered and that Premier failed to take any further action within that case to rectify the error. *See Amie*, 106 Nev. at 543, 796 P.2d at 235; *see also Boca Park*, 133 Nev. at 925, 407 P.3d at 763; *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) ("Claim- and issue-preclusion doctrines are

not concerned with whether the decision in the prior proceeding was right or wrong.").

Turning to Premier's argument that the declaratory-relief exception to claim preclusion set forth in *Boca Park*, 133 Nev. at 925-29, 407 P.3d at 764-66, allows it to pursue its claims in this matter, we again disagree. Under that exception, "claim preclusion [does not apply] where an action seeking [only] a declaratory judgment is followed by a later action for damages or other coercive relief." *Id.* at 925, 407 P.3d at 764. Assuming Premier sought only declaratory relief in the first action,[2] and assuming that the addition of a request for injunctive relief here would bring this action within the exception,[3] Premier's contention on this point still fails. Premier makes no challenge on appeal to the district court's alternative determination that even if claim preclusion did not apply, the dismissal of Premier's claims against BOA on the merits in the first action bars relitigation of the issue of whether BOA's deed of trust survived the foreclosure sale under the separate doctrine of issue preclusion. *See id.* at

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[2]Although Premier did not expressly seek a declaratory judgment under the Uniform Declaratory Judgments Act in the first action, it sought a ruling that BOA's deed of trust was extinguished by the foreclosure sale, and our supreme court has recognized that, "[g]enerally, an action to clarify or remove a cloud on title is either an action in equity or an action for declaratory relief." *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 154, 321 P.3d 875, 879 (2014).

[3]Premier contends that under *Boca Park*, claim preclusion does not apply to *any* subsequent action—regardless of the type of relief sought in that action—where the first action sought only declaratory relief. Despite there being language in *Boca Park* to support this understanding, *see* 133 Nev. at 926, 407 P.3d at 764 (broadly stating that "claim preclusion does not apply where the original action sought only declaratory relief"), we need not reach this issue in light of our disposition.

926 n.1, 407 P.3d at 764 n.1 (noting that, despite the exception to claim preclusion, a declaratory-relief action "does have issue-preclusive effect as to any issues actually litigated by [the parties] and determined in the action" (internal quotation marks omitted)); *Frei v. Goodsell*, 129 Nev. 403, 406-07, 305 P.3d 70, 72 (2013) (setting forth the elements of issue preclusion). Accordingly, any such challenge is waived. *See Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming the district court's ruling where the appellants failed to challenge an alternative ground the district court provided for it); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised on appeal are deemed waived).

Finally, we turn to Premier's contention that even if it is precluded from seeking affirmative relief in this action, it is nevertheless entitled to defend itself against BOA's claims. Aside from a vague allusion to its due-process rights, Premier again offers no legal support for this proposition, nor does it offer any explanation as to how it could possibly defend itself in this action in light of the district court's binding ruling in the first action. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Similarly, although Premier briefly contends that BOA should likewise be precluded from asserting its claims in this action under the doctrine of claim preclusion, it fails to account for the fact that BOA obtained a dismissal of Premier's claims in the first action, thereby negating the need to seek any further relief in that matter. *See id.* And even if BOA's claims in this matter were precluded, any error in entering judgment on them would be harmless, as the district court's ruling here merely reaffirmed the district court's ruling in the first action, resulting in no additional prejudice to Premier's rights. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010)

("When an error is harmless, reversal is not warranted."); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk