IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP,
Respondent.

No. 78754-COA

FILED

FEB 19 2021

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

ORDER OF AFFIRMANCE

SFR Investments Pool 1, LLC (SFR), appeals from a district court summary judgment in an interpleader and quiet title action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

The original owners of the subject property failed to make periodic payments to their 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. Prior to the sale, respondent Bank of America, N.A. (BOA)—the beneficiary of the first deed of trust on the property—tendered payment to the HOA's foreclosure agent for nine months of past due assessments, but the agent rejected the tender and proceeded with its foreclosure sale, at which SFR purchased the property. To distribute the excess proceeds from the sale, the HOA's foreclosure agent initiated the underlying interpleader action, in which BOA and SFR countersued to quiet title, and BOA asserted claims against the HOA for quiet title, negligence, and wrongful foreclosure.

BOA later moved for summary judgment against SFR, but the district court concluded that genuine disputes of material fact remained and denied the motion. The HOA then filed a notice of settlement in the district court reflecting that all of the claims and defenses between itself and BOA had been resolved. Shortly thereafter, our supreme court issued its opinion in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, in which it concluded that a tender of the sort at issue in this case results in the purchaser at the foreclosure sale taking the property subject to the deed of trust. 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). BOA then moved for reconsideration of the district court's order denying its motion for summary judgment on an order shortening time, citing the recently issued opinion. The district court set the matter for a hearing to occur ten days later, and it afforded SFR an opportunity to respond within eight days. On the eighth day, SFR submitted a notice of its intent to verbally oppose the motion at the hearing, which it did, arguing that BOA's settlement with the HOA constituted an election of remedies—an affirmative defense SFR pleaded in its answer—precluding the entry of judgment in favor of BOA on its quiet title claim.

In its written decision, the district court provided that it was granting BOA's motion "pending [the court's] final decision . . . on SFR's 'election of remedies' argument," and it ordered the parties to submit additional briefing on the issue. SFR submitted its brief, which it filed as a motion for reconsideration of the district court's order denying SFR's motion for summary judgment,[1] arguing that new issues of fact and law—namely

[1]The record does not reflect that SFR had filed any countermotion for summary judgment at the time the district court tentatively granted

the settlement between BOA and the HOA, and the supreme court's decision in *Bank of America*, respectively—warranted reconsideration. SFR proceeded to set forth its election-of-remedies argument, contending that the supreme court's decision in *Bank of America* demonstrated that BOA's quiet title claim was derivative of its wrongful foreclosure claim against the HOA, and that awarding judgment in favor of BOA on the quiet title claim was therefore inconsistent with what SFR characterized as BOA's election of a monetary remedy against the HOA in the form of a settlement. BOA opposed the motion on its merits and on grounds that reconsideration was not warranted. The district court entered a written order denying the motion, concluding that SFR had failed to raise any new issues of fact or law to warrant reconsideration. This appeal followed.

On appeal, SFR contends that the district court erred in granting summary judgment in favor of BOA because the settlement between BOA and the HOA constituted an election of remedies. Specifically, SFR contends that BOA elected a monetary remedy against the HOA to compensate for the loss of its security interest and that this was inconsistent with the later judgment declaring that BOA's deed of trust survived the foreclosure sale, resulting in a double recovery for BOA.

However, SFR fails to set forth any argument in its opening brief concerning the district court's actual decision on this issue; namely, its refusal to consider the merits of SFR's election-of-remedies argument on grounds that SFR failed to raise any new issues of law or fact warranting

---

summary judgment in favor of BOA. Regardless, because the parties on appeal essentially treat SFR's motion as having been one for reconsideration of the district court's order tentatively granting summary judgment in favor of BOA, we likewise construe it as such.

reconsideration. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (identifying new issues of law or fact as grounds for reconsideration); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived"); *Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (providing that the appellate courts may consider the arguments presented in a motion for reconsideration "if the reconsideration order and motion are properly part of the record on appeal from the final judgment, and *if the district court elected to entertain the motion on its merits*" (emphasis added)). Instead, SFR argues for the first time in its reply brief that it did present new issues of law and fact, and that the district court's decision to deny reconsideration therefore constituted an abuse of discretion, which SFR concedes is the appropriate standard of review on this particular issue. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 589, 245 P.3d 1190, 1195, 1197 (2010) (construing a timely motion for reconsideration as a motion to alter or amend the judgment under NRCP 59(e) and, in an appeal from the final judgment, reviewing the denial of the motion for an abuse of discretion). Accordingly, SFR has waived its argument on this point, and it has therefore failed to demonstrate that the district court inappropriately denied its motion for reconsideration.

Although SFR failed to preserve the issue, we note—without taking any position on the merits—that SFR fails to present any relevant authority in support of the notion that BOA's settlement with the HOA for an undisclosed amount constituted a remedy subject to the election-of-

remedies doctrine. *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 relevant authority); *Second Baptist Church of Reno v. First Nat'l Bank of Nev.*, 89 Nev. 217, 220, 510 P.2d 630, 632 (1973) (providing that election of remedies is a defense where there are two or more remedies that are inconsistent with each other and the plaintiff chooses one or more of them); *Black's Law Dictionary, Remedy* (11th ed. 2019) (defining "remedy" as "[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief," and noting that "[a] remedy is anything *a court* can do for a litigant who has been wronged or is about to be wronged" (emphasis added) (quoting Douglas Laycock, *Modern American Remedies* 1 (4th ed. 2010))). Although SFR cites our supreme court's unpublished decision in *Nevada Association Services, Inc. v. Las Vegas Rental & Repair, LLC Series 78*, Docket No. 73157 (Order Affirming in Part and Reversing in Part, December 27, 2018), which reversed an award of damages to BOA in a similar case on grounds that it was inconsistent with the preservation of BOA's deed of trust, that decision does not stand for the proposition that a pretrial settlement for an undisclosed amount constitutes a remedy akin to court-ordered damages.[2] *Cf. Bocanegra v. Aetna Life Ins. Co.*, 605 S.W.2d 848, 853 (Tex. 1980) ("One may . . . receive something by way of settlement, even of substantial value,

[2]We note that the United States District Court for the District of Nevada has rejected this election-of-remedies argument on these same grounds in at least two separate cases. *See Nationstar Mortg. LLC v. Curti Ranch Two Maint. Ass'n*, No. 3:17-cv-00699-LRH-CLB, 2019 WL 6877552, at *7 (D. Nev. 2019); *Bank of Am., N.A. v. Berberich*, No. 2:16-cv-00279-GMN-CWH, 2019 WL 1442168, at *6 n.3 (D. Nev. 2019).

under an uncertain claim without making an election [of remedies] which bars recovery against another person.").

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 32
Kim Gilbert Ebron
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.