IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 80826-COA

FILED

JUN 04 2021

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

ORDER OF AFFIRMANCE

Las Vegas Development Group, LLC (LVDG), appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

The original owner of the subject property failed to make periodic payments to her 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. LVDG purchased the property at the resulting foreclosure sale and filed the underlying action seeking to quiet title. The beneficiary of the first deed of trust on the property—respondent Nationstar Mortgage, LLC (Nationstar)—filed an answer and counterclaim seeking the same. LVDG later moved for summary judgment, which Nationstar opposed.

At the hearing on the motion, Nationstar asserted for the first time that the Federal Home Loan Mortgage Corporation (Freddie Mac) owned the underlying loan secured by Nationstar's deed of trust such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the

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foreclosure sale from extinguishing Nationstar's interest.[1] Nationstar requested leave to file supplemental briefing on the issue, which the district court granted, also allowing LVDG to respond. With its supplemental brief, Nationstar presented evidence—including a declaration from a Freddie Mac employee, excerpts from the Freddie Mac Single-Family Seller/Servicer Guide, and printouts from Freddie Mac's database of purchased loans—indicating that Freddie Mac owns the loan secured by Nationstar's deed of trust and that Nationstar services the loan. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 235-36, 445 P.3d 846, 850-51 (2019) (concluding that similar evidence, without evidence to the contrary, was sufficient to establish Freddie Mac's ownership of a loan). LVDG presented multiple arguments in opposition, including that Nationstar represented in its answer that it—not Freddie Mac—owned the loan. LVDG also requested that the district court afford it the opportunity to conduct discovery on the question of which entity owns the loan.

The district court ultimately granted summary judgment in favor of LVDG, concluding that the HOA foreclosed on its superpriority lien and thereby extinguished Nationstar's deed of trust. Despite having full briefing from both parties on the Federal Foreclosure Bar issue, the district court did not address the issue in its order. Nationstar appealed from that order, and this court reversed and remanded the case for further proceedings. *Nationstar Mortg., LLC v. Las Vegas Dev. Grp., LLC*, Docket No. 76036-COA (Order of Reversal and Remand, October 17, 2019). We concluded that, "in light of the supplemental briefing and exhibits that the district court granted Nationstar leave to file, summary judgment was

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[1]We note that although Nationstar had not previously asserted that Freddie Mac owned the loan, it did present the Federal Foreclosure Bar as an affirmative defense in its answer to LVDG's first amended complaint.

improper, as a genuine issue of material fact remains as to whether Freddie Mac owns the underlying loan, such that the Federal Foreclosure Bar preserved its and Nationstar's interests following the sale." *Id.* We also "decline[d] to consider in the first instance LVDG's arguments that Nationstar failed to properly amend its pleadings or disclose evidence relating to Freddie Mac's purported interest." *Id.*

On remand, the district court set the matter for a status check. At the hearing, LVDG repeated its request that the district court allow it to conduct discovery on the question of which entity owns the loan, while Nationstar argued that summary judgment in its favor was warranted, as it contended that this court reversed solely because the district court failed to address the foreclosure-bar issue in the first instance. The district court took the matter under advisement, indicating that it would determine whether LVDG should be permitted to conduct discovery. The district court later entered a "First Amended Findings of Fact, Conclusions of Law and Order" granting summary judgment in favor of Nationstar on grounds that Freddie Mac owned the loan and that the Federal Foreclosure Bar therefore preserved the deed of trust. The court also denied LVDG's request to conduct discovery on grounds that "it did not identify what discovery needed to be had, and produced no evidence showing the existence of factual questions to dispel summary judgment in [Nationstar]'s favor." This appeal followed.

LVDG sets forth multiple arguments in favor of reversal. First, it contends that the district court erred by granting summary judgment when a genuine dispute of material fact existed concerning ownership of the underlying loan. It further contends that the district court erred by considering Nationstar's evidence concerning the Federal Foreclosure Bar, as Nationstar failed to properly disclose that evidence pursuant to NRCP

16.1. Finally, LVDG contends that the district court abused its discretion when it denied LVDG's request to conduct discovery under NRCP 56(d).

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). Summary judgment is proper if the pleadings and evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* However, discovery matters generally fall "within the district court's sound discretion, and we will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion." *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224, 467 P.3d 1, 4 (Ct. App. 2020) (internal quotation marks omitted); *see Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 713 (2011) (reviewing the denial of a continuance to conduct discovery for an abuse of discretion).

At the outset, we agree with LVDG that this court's prior order of reversal and remand indicated that a genuine dispute of material fact remained as to whether Freddie Mac owned the loan. After all, Nationstar claimed in its answer that it owned both the deed of trust and the underlying loan, whereas it later presented evidence indicating that Freddie Mac owned the loan and that Nationstar simply serviced the loan on behalf of that entity. However, despite framing our disposition of Nationstar's prior appeal in terms of a genuine dispute of material fact, this court's reversal was largely premised upon the extent to which the district court did not address the foreclosure-bar issue at all, and we did not expressly determine that Nationstar's statement in its answer that it owned the underlying loan constituted evidence of the sort necessary to create a

genuine factual dispute.[2] *See Nationstar*, Docket No. 76036-COA (Order of Reversal and Remand, October 17, 2019). And as argued by Nationstar in this appeal, statements in unverified pleadings are not evidence. *See United States v. Zermeno*, 66 F.3d 1058, 1062 (9th Cir. 1995) ("The government's assertions in its pleadings are not evidence."); *S. Pac. Co. v. Conway*, 115 F.2d 746, 750 (9th Cir. 1940) ("[T]he office of a pleading is to state ultimate facts and not evidence of such facts."); *Gittings v. Hartz*, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000) (concluding that "the district court had no factual record to support [its] conclusion" where it relied "solely on the . . . statements contained in the pleadings of the parties"). Accordingly, the unrebutted evidence before the district court established that Freddie Mac—not Nationstar—owned the underlying loan, and summary judgment was therefore appropriate. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (explaining the parties' respective burdens of production on summary judgment).

Turning to LVDG's contention that Nationstar's foreclosure-bar evidence was inadmissible because it was not timely disclosed pursuant to

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[2]To the extent LVDG contends on appeal that language in the various assignments of the deed of trust in the record indicated that an entity other than Freddie Mac owned the loan, in light of Nationstar's evidence of Freddie Mac's ownership, the language in the assignments is inapposite. Our supreme court recognized in *Daisy Trust* that Freddie Mac obtains its interest in a loan by virtue of the promissory note being negotiated to it. 135 Nev. at 234 n.3, 445 P.3d at 849 n.3. Consequently, because the promissory note had already been negotiated to Freddie Mac at the time of the relevant assignments of the deed of trust, the assignors lacked authority to transfer the note, and the language in the assignments purporting to do so had no effect. *See* 6A C.J.S. *Assignments* § 111 (2021) ("An assignee stands in the shoes of the assignor and ordinarily obtains only the rights possessed by the assignor at the time of the assignment, and no more.").

NRCP 16.1 and that the district court therefore erred in considering it, we disagree. LVDG fails to set forth any cogent argument or relevant authority in support of the notion that evidence is automatically inadmissible simply because it was not timely disclosed. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). And to the extent LVDG contends that the district court was required under the rules of civil procedure to disregard the untimely evidence and that its failure to do so amounted to legal error, we reject its argument, as such a determination—at least in the absence of prejudice—is discretionary in nature, not mandatory.[3] *See* NRCP 16.1(e)(3) (providing that a district court "should impose . . . appropriate sanctions" concerning a failure to comply with NRCP 16.1); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265, 396 P.3d 783, 787-88 (2017) (describing the materially similar previous version of NRCP 16.1(e)(3)(B) as "providing for discretionary exclusion of evidence" for failure to comply with NRCP 16.1); *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010) (providing that decisions concerning discovery sanctions are generally reviewed for an abuse of discretion); *see also* NRCP 37(c)(1) (providing that, if a party fails to disclose information or a witness under NRCP 16.1, it "is not allowed to use that information or witness to supply evidence on a motion . . . unless the failure . . . is harmless").

[3]Moreover, it does not appear from the record that LVDG ever sought any relief before the district court concerning NRCP 16.1. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

With respect to prejudice—and in relation to LVDG's final argument on appeal concerning a continuance for discovery under NRCP 56(d)—LVDG contends that Nationstar's late disclosure allowed it to ambush LVDG with evidence that it never had the opportunity to verify or otherwise examine in discovery. LVDG further contends that it was entitled to NRCP 56(d) relief because it submitted a declaration to the district court detailing the discovery it needed concerning which entity owns the underlying loan.[4] *See* NRCP 56(d)(2) (providing that, "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . allow time to obtain affidavits or declarations or to take discovery").

But we cannot conclude that the district court abused its discretion in denying NRCP 56(d) relief, as it essentially determined that LVDG failed to demonstrate that the information identified in its declaration—i.e., the method and manner in which Freddie Mac securitized loans—was "essential to justify its opposition." *See id.* Indeed, LVDG failed to explain below—and again fails to explain on appeal—how such information would show that any entity other than Freddie Mac was the true owner of the loan, nor did it show how such information would otherwise undermine Nationstar's evidence or the application of the Federal Foreclosure Bar to this case. *See Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005) ("[A] motion for a continuance

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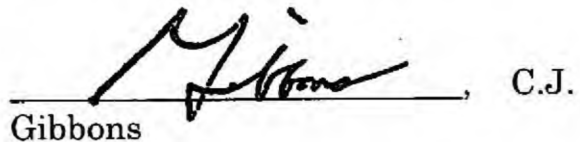
[4]LVDG also vaguely contends that the district court violated its due-process rights by failing to allow it to conduct discovery on this point. But procedural due process generally requires that a party receive notice and an opportunity to be heard, *see Wilson v. Pahrump Fair Water, LLC*, 137 Nev., Adv. Op. 2, 481 P.3d 853, 859 (2021), and LVDG fails to present any cogent argument or relevant authority in support of the notion that it was denied such rights or how a denial of NRCP 56(d) relief amounts to a due-process violation. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

under [what was previously codified as] NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact."). Likewise, in light of both LVDG's deficient showing on this point and its opportunity to present arguments in opposition to the Federal Foreclosure Bar below, we cannot conclude that it was prejudiced by Nationstar's tardy disclosure under NRCP 16.1. *See* NRCP 37(c)(1); *Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *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.").

Based on the foregoing, LVDG has failed to demonstrate that the district court erred or abused its discretion in granting summary judgment in favor of Nationstar, and we therefore

ORDER the judgment of the district court AFFIRMED.[5]



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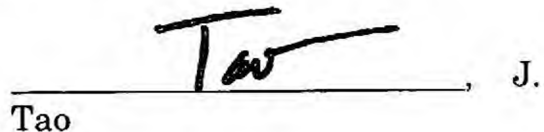

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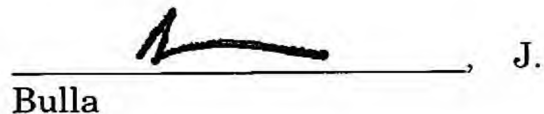

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[5]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Susan Johnson, District Judge
Roger P. Croteau & Associates, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk