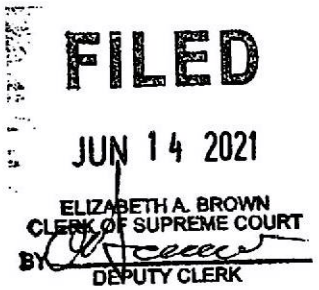
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDITHA SALVADOR,
Appellant,
vs.
COUNTRYWIDE HOME LOANS, INC.; BANK OF AMERICA, N.A. (BANA); MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS); QUALITY LOAN SERVICE CORPORATION; AND BANK OF NEW YORK MELLON, F/K/A BANK OF NEW YORK,
Respondents.

No. 79165-COA



ORDER OF AFFIRMANCE

Editha Salvador appeals from a district court order dismissing her complaint, certified as final pursuant to NRCP 54(b), in a contract and tort action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

After her home was sold at a nonjudicial foreclosure sale, Salvador commenced the underlying tort action against respondents Countrywide Home Loans, Inc. (Countrywide); Bank of America, N.A. (BOA); Mortgage Electronic Registration Systems, Inc. (MERS); Quality Loan Service Corporation (QLS); and Bank of New York Mellon f/k/a Bank of New York (BNYM), which were each involved with Salvador's loan at one time, either as a note holder, deed of trust beneficiary, servicer, or foreclosure trustee. Salvador primarily alleged that her home loan was void *ab initio* because the entity that originated it, Meridias Capital, Inc. (Meridias), was not licensed to do so in Nevada, although her complaint did

not identify a specific statute that required Meridias to obtain a license before originating her home loan.[1]

Countrywide, BOA, MERS, and BNYM moved to dismiss under NRCP 12(b)(5), and QLS joined, arguing that Salvador was attempting to unwind the foreclosure of her home, that her efforts centered on a challenge to the securitization of her loan, and that the challenge failed because securitization does not render a loan unenforceable. Moreover, respondents argued that certain of Salvador's claims failed, either because her loan was a valid, enforceable contract or because Salvador's claims were not recognized in Nevada, directed at respondents, or sufficiently pleaded. Salvador, in turn, moved for summary judgment, asserting that her complaint was unopposed because Countrywide, BOA, MERS, and BNYM did not file or serve their motion to dismiss, which according to Salvador, also rendered QLS's joinder ineffective. And for the same reason, Salvador also obtained the entry of default against Countrywide and MERS.

Following a hearing, the district court set aside the entry of default against Countrywide and MERS, reasoning that their motion to dismiss was timely filed. And agreeing with the arguments in that motion, the district court dismissed Salvador's claims against respondents. This appeal followed.

This court reviews district court orders setting aside the entry of default for an abuse of discretion. *Landreth v. Malik*, 127 Nev. 175, 188, 251 P.3d 163, 171 (2011). We review district court orders granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the plaintiff's complaint as true and drawing all inferences in the plaintiff's

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[1]Salvador also named Meridias in her complaint, but it failed to appear below.

favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Dismissal is only appropriate "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.

Initially, insofar as Salvador challenges the order setting aside the entry of default against Countrywide and MERS,[2] her challenge fails. Indeed, if a defendant files and serves a motion for relief under NRCP 12(b)(5) within 21 days of being served with the summons and complaint, then a default cannot properly be entered against the defendant. *See* NRCP 12(a)(1)(A), (a)(3)(A), (b) (providing that an NRCP12(b)(5) motion must be filed and served before an answer and that an answer need not be filed until 14 days after service of an order denying such a motion); NRCP 55(a) (providing that a defendant must fail to plead or otherwise defend before the clerk of court is required to enter the defendant's default). And here, Countrywide and MERS, among others, filed their motion to dismiss less than 21 days after being served with Salvador's summons and complaint, and they attached a certificate to the motion indicating that Salvador was served at the same time.[3] *See* NRCP 5(b)(4) (providing that proof of service may be made by such a certificate). Thus, the district court did not abuse

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[2]Salvador also asserts that she obtained the entry of default against BOA and BNYM, but her assertion is not borne out by the record.

[3]Although Salvador contends that her due process rights were violated because she did not receive the motion, the record demonstrates that she had notice the motion was filed and could have obtained a copy from the clerk's office. Moreover, Salvador had an opportunity to be heard at the hearing on the matter. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that due process requires notice and an opportunity to be heard).

its discretion by setting aside the entry of default against Countrywide and MERS. *See Landreth*, 127 Nev. at 188, 251 P.3d at 171.

Turning to the dismissal order, Salvador argues that her loan was void and unenforceable because Meridias originated it without being licensed to do so in Nevada. In line with her approach during the underlying proceeding, Salvador's informal brief did not identify the legal authority that she believes Meridias violated when it failed to obtain a license before issuing her a loan. Nevertheless, pro se parties are not required to cite legal authority in their informal briefs, and it appeared that multiple licensing statutes could potentially apply in this case. Thus, because Salvador's argument implicated a novel question left open by the supreme court's decision in *Sylver v. Regents Bank, N.A.*, 129 Nev. 282, 290, 300 P.3d 718, 723 (2013), which is whether loans made in violation of licensing requirements are necessarily unenforceable, we directed respondents to address this question in their answering brief and invited the Real Property Law Section of the State Bar of Nevada (RPLS) to do the same in an amicus brief.

In her replies to respondents' and the RPLS's briefs, Salvador clarifies for the first time in this matter that she believes that Meridias violated NRS 645E.910,[4] which makes it unlawful for any *foreign entity* to

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[4]In 2017, the Nevada Legislature repealed NRS Chapter 645E and incorporated its provisions in NRS Chapter 645B, which now applies to various entities, including mortgage bankers, that are broadly termed "mortgage company" and "mortgage loan originator." 2017 Nev. Stat., ch. 486, Legislative Counsel's Digest, at 3034. But we are concerned here with NRS Chapter 645E as it existed in 2006, which was when Salvador's deed of trust was recorded. *See Sylver*, 129 Nev. at 289-90 & n.5, 300 P.3d at 723 & n.5 (considering the effect of a violation of NRS Chapter 645E's licensing requirements based on the version of that statute that was in effect when

conduct business in Nevada as a mortgage banker without obtaining a Nevada mortgage banking license or a certificate of exemption pursuant to NRS Chapter 645E.[5] She does so notwithstanding that respondents implicitly argued that NRS 645E.910 is inapplicable in this case, when they observed in their answering brief that *Sylver*'s discussion of the policy underlying that statute—preventing predatory lending by out-of-state lenders, *see* 129 Nev. at 290, 300 P.3d at 724—is not applicable in this matter since Salvador's complaint alleged that Meridias is based in Nevada. Indeed, although Salvador acknowledges that Meridias is based in Nevada in her reply to respondents' answering brief, she nonetheless repeatedly cites NRS 645E.910 as controlling in that document. Moreover, in her reply, Salvador implies that she has always relied on NRS 645E.910 for her claims, as she discusses her discovery that Meridias purportedly violated this statute in conjunction with her learning it was unlicensed from the Clark County Recorder's Office and Nevada Real Estate Division

Given Salvador's allegation in her complaint that Meridias is based in Nevada, which we must construe as true when reviewing an NRCP

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the relevant deed of trust was recorded). Thus, unless otherwise specified, the citations in this text are to the version of NRS Chapter 645E that was in effect in 2006.

[5]Although Salvador seeks to demonstrate that her loan is unenforceable because Meridias violated NRS 645E.910, she also confusingly seems to contend that Nevada's licensing laws are preempted by several federal acts. We need not address this contention, however, because Salvador fails to provide any cogent argument on appeal explaining how federal law preempts any specific provision of NRS Chapter 645E. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that Nevada's appellate courts need not address issues that are unsupported by cogent argument).

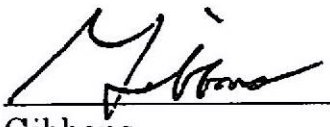
12(b)(5) dismissal order, *see Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672, we conclude that Salvador cannot show that Meridias violated NRS 645E.910 since that statute only applies to out-of-state mortgage bankers. And since a violation of NRS 645E.910 underpins Salvador's theory concerning the unenforceability of her loan, she has not established that the district court erred in dismissing her claims to the extent they were based on that theory. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Salvador also challenges the dismissal of her claims by attempting to demonstrate that her note and deed of trust were split at the time of the foreclosure of her home. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 514, 286 P.3d 249, 255 (2012) ("[T]o have standing to foreclose, the current beneficiary of the deed of trust and the current holder of the promissory note must be the same."). QLS was the respondent that commenced the nonjudicial foreclosure proceeding for Salvador's home on behalf of the beneficiary of the deed of trust, BNYM, and when it did so, Salvador elected to participate in Nevada's Foreclosure Mediation Program (FMP) with QLS, which ultimately resulted in the issuance of a foreclosure certificate. Because a foreclosure certificate issued, a determination was necessarily made that BNYM/QLS had the documentation needed to establish their standing to foreclose on Salvador's home, and she is therefore precluded from challenging their standing to foreclose in the context of the present proceeding. *See* NRS 107.086(5) (requiring the beneficiary of the deed of trust or a representative to produce an original or certified copy of the relevant note, deed of trust, and any assignments thereof at the mediation); *Edelstein*, 128 Nev. at 513-14, 286 P.3d at 255 (explaining that the purpose of the FMP's document production requirement is to show that the entity seeking to foreclose had authority to

proceed against the property); *see also Five State Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713-14 (2008) (setting forth the elements necessary to apply issue preclusion and explaining that "issue preclusion . . . applies to prevent relitigation of . . . a specific issue that was decided in a previous suit"). As a result, Salvador failed to demonstrate that relief is warranted in this regard.

Thus, given the foregoing, we conclude that Salvador failed to demonstrate that the district court erred by dismissing her complaint. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



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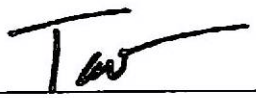
Gibbons



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[6]To the extent that Salvador raises additional arguments that are not specifically addressed herein, we have considered them and conclude that they either do not present a basis for relief, need not be reached given our disposition of this appeal, or have been waived due to Salvador's failure to present them in her informal brief. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

cc: Hon. Ronald J. Israel, District Judge
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McCarthy & Holthus, LLP/Las Vegas
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