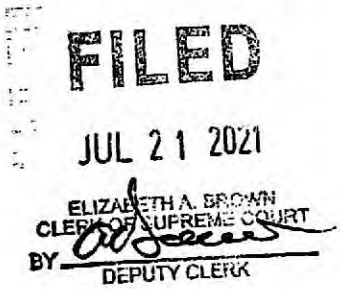
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS RENTAL HOMES CORP., A NEVADA CORPORATION,
Appellant,
vs.
THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK,
Respondent.

No. 80546-COA



ORDER OF AFFIRMANCE

Las Vegas Rental Homes Corp. (LV Rental) appeals from a district court order dismissing a complaint in a tort and contract action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

The original owner of real property located at 5712 Saint Elias Street in North Las Vegas executed a promissory note, secured by a first deed of trust, which was later assigned to respondent The Bank of New York Mellon (BNYM). The homeowner eventually failed to make periodic payments to her homeowners' association (HOA), which ultimately foreclosed on its delinquent-assessment lien pursuant to NRS Chapter 116. As there were no third-party bidders at the sale, the HOA acquired title to the property by credit bid and shortly thereafter sold it to Trashed Home Corporation (THC). THC then filed a quiet-title action against BNYM seeking a ruling that the HOA's foreclosure sale extinguished the first deed of trust. On March 28, 2013, while the quiet-title action was pending, BNYM conducted its own nonjudicial foreclosure sale and purported to sell the property to LV Rental, which shared the same principal—Liegh Tait—with THC, for $190,000.

THC then amended its complaint to assert an additional claim for wrongful foreclosure against BNYM. That matter proceeded to a bench trial and, on July 23, 2018, the district court entered its written findings of fact and conclusions of law quieting title in favor of THC on grounds that the HOA had foreclosed on its superpriority lien and thereby extinguished BNYM's deed of trust. The court further concluded that BNYM's foreclosure sale was wrongful on grounds that it had no interest in the property at that time, but that THC was not entitled to any damages, as it was nonparty LV Rental that tendered $190,000, not THC. BNYM did not appeal from that judgment.[1]

Then, on March 28, 2019—less than one year after entry of the judgment quieting title in favor of THC, but six years after BNYM's foreclosure sale—LV Rental initiated the underlying action against BNYM, asserting claims of fraudulent misrepresentation, fraud in the inducement, conspiracy to defraud, breach of contract, conversion, and unjust enrichment. In relevant part, LV Rental alleged that BNYM knew its deed of trust was extinguished at the time it wrongfully foreclosed and purported

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[1]Accordingly, for purposes of this appeal, it is undisputed that THC acquired title to the subject property free of BNYM's deed of trust and any subsequent interest, that BNYM wrongfully foreclosed because it lacked an interest in the property at that time, and that LV Rental has no current interest in the property. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014) (holding that proper foreclosure of an HOA's superpriority lien extinguishes a first deed of trust); *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 616, 310 P.3d 555, 559 (2013) ("A wrongful foreclosure claim challenges the authority behind the foreclosure . . . ."); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476-77, 255 P.3d 1275, 1279 (2011) (recognizing that a valid deed of trust is a prerequisite to foreclosure).

to sell the property to LV Rental, and that LV Rental incurred damages as a result of the purported sale. LV Rental further alleged that it only became aware of its claims when the district court entered judgment in favor of THC in the prior action. BNYM filed a motion to dismiss LV Rental's complaint for failure to state a claim under NRCP 12(b)(5), which the district court granted in an extensive written order. Taking judicial notice of various public records,[2] the district court concluded that all of LV Rental's claims were time-barred under the relevant statutes of limitations.[3] It also determined that LV Rental's claims were precluded under the doctrine of claim preclusion because LV Rental was in privity with THC by virtue of their shared principal and could have raised its claims in the prior case.

The district court further determined with respect to the fraud-based claims that LV Rental failed to plead them with particularity as required by law, and also that BNYM did not make any false representations of the sort necessary to sustain a fraud claim in connection with its foreclosure because the sale was made entirely without warranties. Additionally, with respect to LV Rental's breach-of-contract claim, the

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[2]"[A district] court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

[3]We note that the district court, when considering whether LV Rental timely filed the breach-of-contract claim, determined that the claim was more appropriately characterized as one for wrongful foreclosure, and it applied the three-year limitations period applicable to actions upon a liability created by statute under NRS 11.190(3)(a), rather than the six-year period applicable to actions upon a written contract under NRS 11.190(1)(b). In light of our disposition, we need not address the propriety of the district court's ruling on this point.

district court determined that it failed on its merits because the relationship created between BNYM as the foreclosing lender and LV Rental as the purchaser at the foreclosure sale was not contractual in nature, and also because LV Rental's complaint failed to explain what contract was supposedly breached or how the parties supposedly performed or failed to perform under it. The only claims for which the district court did not conclude that LV Rental's substantive allegations were insufficient to state a claim were the conversion and unjust-enrichment claims, which the district court dismissed solely on grounds that they were time-barred and precluded, as noted above. Accordingly, the district court dismissed LV Rental's complaint with prejudice and denied leave to amend on grounds of futility. This appeal followed.

This court reviews a district court's order granting a motion to dismiss de novo. *Jesseph v. Digital Ally, Inc.*, 136 Nev., Adv. Op. 59, 472 P.3d 674, 676-77 (2020); *see Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013) (reviewing an NRCP 12(b)(5) dismissal and noting that "the application of the statute of limitations is a question of law that this court reviews de novo" when the facts are undisputed); *see also Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 136 Nev. 235, 237, 464 P.3d 104, 107 (2020) (reviewing a dismissal on grounds of claim preclusion de novo).

On appeal, LV Rental argues that its claims did not accrue for statute-of-limitations purposes—and, relatedly, that it lacked standing and its claims were not ripe—until the district court entered judgment in favor of THC in the prior action, and also that the doctrine of claim preclusion does not apply and therefore does not bar the claims.

As an initial matter, LV Rental fails to develop any arguments challenging the alternative grounds the district court provided for dismissing the fraud and breach-of-contract claims. As noted above, the district court alternatively dismissed the fraud claims on the ground that LV Rental failed to plead them with particularity and that BNYM did not make any fraudulent representations. And the court alternatively dismissed LV Rental's breach-of-contract claim on the merits, noting that its relationship with BNYM was not contractual in nature and that the complaint failed to explain what contract was supposedly breached or how the parties supposedly performed or failed to perform under it.

Although LV Rental states in the section of its opening brief titled "Statement of the Issues Presented for Review" that, in addition to the district court's rulings concerning the applicable statutes of limitations and claim preclusion, "[w]hether the district court erred by granting [BNYM]'s Motion to Dismiss under NRCP 12(b)(5)" is a distinct issue presented for this court's review, such passing references to issues in an appellate brief—particularly in the brief's introductory sections—are generally insufficient to preserve them for review. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-82 (11th Cir. 2014). And LV Rental fails to present any argument with respect to the district court's rulings concerning the merits of the fraud claims. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Moreover, with respect to its breach-of-contract claim, LV Rental summarily states in the argument section of its brief that its purchase of the property at BNYM's foreclosure sale was a "bargained for exchange," that BNYM "breached its contract" with LV Rental, and that the district court's conclusion that no contractual

agreement existed was "in error." But it fails to support these conclusory assertions with cogent argument or relevant authority.[4] *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 such unsupported claims). Accordingly, LV Rental has failed to adequately challenge the alternative grounds the district court provided for dismissing the fraud and breach-of-contract claims, and we necessarily affirm their dismissal. *See Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming a dismissal where the appellants failed to challenge an alternative ground the district court provided for it).

Turning to LV Rental's contention that the remaining claims for conversion and unjust enrichment did not accrue until the prior action concluded, it argues only that it could not have discovered that BNYM lacked an interest in the property—and therefore lacked authority to foreclose—until the district court concluded as much in the prior case. BNYM counters that LV Rental was on notice of its claims as of the time it

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[4]We additionally note that our supreme court has repeatedly concluded in the analogous context of HOA foreclosure sales—albeit in unpublished orders—that such sales are "governed strictly by statute, not by two parties entering into negotiations that are consummated by written agreement," that "a foreclosure deed is an instrument by which land is conveyed, not an enforceable contract between two parties," and that "reliance on the foreclosure auction process and the foreclosure deed for [an] allegation that a contract existed between . . . two parties is therefore misguided." *See, e.g., LN Mgmt. LLC Series 5246 Ferrell v. Treasures Landscape Maint. Ass'n*, Docket No. 80437 (Order of Affirmance, February 16, 2021); *see also* NRAP 36(c)(3) (providing that post-2015 unpublished orders from the supreme court are citable for their persuasive value). And LV Rental has not provided this court with any argument as to why this rationale would not apply equally to deed-of-trust foreclosures, which are likewise governed by statute in NRS Chapter 107.

purportedly purchased the subject property at BNYM's foreclosure sale. We agree with BNYM, and because LV Rental has failed to demonstrate that the relevant limitations periods were tolled during the pendency of the prior litigation, we affirm.

A three-year limitations period applies to conversion claims, *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (citing NRS 11.190(3)(c)), while unjust enrichment is subject to a four-year period. *In re AMERCO Derivative Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) (citing NRS 11.190(2)(c)). Such periods run from the date the claim accrues, which is generally "when the wrong occurs and a party sustains injuries for which relief could be sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). But an exception to this general rule is the "discovery rule," which tolls the limitations period "until the injured party discovers or reasonably should have discovered facts supporting a cause of action," *id.*, or, more specifically, "the facts constituting the elements of [the] cause of action," *AMERCO*, 127 Nev. at 228, 252 P.3d at 703 (internal quotation marks omitted).

For both conversion and unjust enrichment, the applicable limitations period is computed according to the discovery rule. *See Bemis*, 114 Nev. at 1025, 967 P.2d at 440 (holding that the statute of limitations for conversion is discovery based); *see also AMERCO*, 127 Nev. at 228-29, 252 P.3d at 703-04 (remanding and noting that questions of fact remained as to whether appellants' claims, including unjust enrichment, were time-barred under the discovery rule). And although determining when a plaintiff knew or should have known of the facts giving rise to a claim is generally a question of fact, *see AMERCO*, 127 Nev. at 228, 252 P.3d at 703; *Bemis*, 114 Nev. at 1025, 967 P.2d at 440, this court reviews the application

of a statute of limitations de novo when the underlying facts are uncontroverted, *see Holcomb*, 129 Nev. at 186-87, 300 P.3d at 128, as they are here.

In arguing that the relevant statutory periods were tolled under the discovery rule, LV Rental essentially concedes that, under the general rule of accrual set forth in *Petersen*, the "wrong" occurred when BNYM purported to foreclose on the property despite lacking the authority to do so. 106 Nev. at 274, 792 P.2d at 20. However, LV Rental contends that it could not have discovered this wrong—and that the limitations periods were therefore tolled—until the district court presiding over the prior action confirmed BNYM's lack of an interest at the conclusion of that case.[5] But

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[5]In light of LV Rental's voluntary decision to tender the funds to BNYM following the foreclosure sale, as well as its apparent acquiescence to BNYM retaining them pending the outcome of the prior case, it is arguable that BNYM's retention of the funds did not actually become wrongful or inequitable until the district court in the prior case confirmed BNYM's lack of an interest. *See Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (providing that conversion involves "a distinct act of dominion *wrongfully* exerted over another's personal property" in such a manner that it is "*inconsistent* with his title or rights therein" (emphasis added) (internal quotation marks omitted)); Restatement (Third) of Restitution and Unjust Enrichment § 70 (Am. Law Inst. 2011) (discussing the accrual of unjust-enrichment claims and noting that, "[j]ust as there is no unjust enrichment before there has been enrichment, there is no unjust enrichment before the defendant's retention of a benefit becomes unjust"); *cf. Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n*, 137 Nev., Adv. Op. 8, 482 P.3d 665, 675 (2021) (holding that a party is not liable for conversion or unjust enrichment when it retains genuinely disputed funds in escrow pending the outcome of litigation). But LV Rental fails to set forth any argument on this point; instead, it relies solely on the extent to which it supposedly could not have discovered that BNYM lacked an interest until the prior suit concluded. Accordingly, we decline to address this issue. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3; *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

we are not persuaded by this argument, as LV Rental knew or should have known that BNYM lacked an interest in the property when LV Rental purported to purchase it at BNYM's foreclosure sale.

LV Rental, which shared the same principal as THC, does not dispute—nor could it—that it knew of the prior HOA foreclosure and the pending lawsuit concerning title when it purportedly purchased the property at BNYM's foreclosure sale. *See AMERCO*, 127 Nev. at 214, 252 P.3d at 695 ("A corporation can acquire knowledge or receive notice only through its officers and agents . . . ." (quoting *Strohecker v. Mut. Bldg. & Loan Ass'n of Las Vegas, Nev.*, 55 Nev. 350, 355, 34 P.2d 1076, 1077 (1934)). And like THC, LV Rental knew that NRS 116.3116(2) (2012) provided that a portion of an HOA's delinquent-assessment lien has priority over first security interests. *See Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915) ("Every one is presumed to know the law and this presumption is not even rebuttable."). Thus, like THC before it—and regardless of the pending litigation—LV Rental was on notice of facts demonstrating that BNYM's interest was extinguished by the HOA foreclosure. *See SFR*, 130 Nev. at 758, 334 P.3d at 419 (confirming that proper foreclosure of an HOA's superpriority lien extinguishes a first deed of trust); *see also K&P Homes v. Christiana Tr.*, 133 Nev. 364, 368, 398 P.3d 292, 295 (2017) ("*SFR* . . . did not create new law or overrule existing precedent; rather, that decision declared what NRS 116.3116 has required since the statute's inception."). LV Rental had therefore discovered facts indicating that BNYM lacked the authority to foreclose, meaning LV Rental was on notice of the wrong that it contends gave rise to the instant action. *See AMERCO*, 127 Nev. at 228, 252 P.3d at 703; Restatement (Third) of Restitution and Unjust Enrichment

§ 70 (noting that a "claim accrues at the point when the eventual action *might* first have been successfully brought" (emphasis added)).

To the extent LV Rental contends that the uncertainty created by the pendency of the prior action somehow operated to toll the limitations periods, our supreme court rejected a similar argument in *Siragusa v. Brown*, where it concluded that the relevant periods governing appellants' claims were not tolled while the parties were litigating the same issues in bankruptcy court, and it noted that its "prior cases tolling the statutes of limitations during the pendency of other proceedings are limited to their facts and have no broader application in the instant case." 114 Nev. 1384, 1394 n.7, 971 P.2d 801, 808 n.7 (1998) (citing cases discussing equitable grounds for tolling). The *Siragusa* court further "reject[ed] appellants' assertion that the limitations periods were tolled until they knew what relief, if any, they would receive in bankruptcy court." *Id.* (citing *Grimmett v. Brown*, 75 F.3d 506, 515-17 (9th Cir. 1996) (reasoning that pending litigation does not toll the statute of limitations where "the injury has occurred and is known, but it is speculative whether the damages might be reduced or even eliminated by [the pending litigation]")).

LV Rental has failed to provide this court with any reason to diverge from the general rule acknowledged in *Siragusa* that pending litigation, even if it might ultimately render a party's claims moot, does not toll statutory limitations periods.[6] *See Edwards*, 122 Nev. at 330 n.38, 130

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[6]We acknowledge that there is Nevada authority setting forth specific instances where the fact of a claimant's injury is rendered so uncertain by pending litigation that the relevant statute of limitations does not begin to run until the litigation concludes. *See, e.g., Branch Banking & Tr. Co. v. Gerrard*, 134 Nev. 871, 873, 432 P.3d 736, 738 (2018) ("[I]n cases involving

P.3d at 1288 n.38 (noting that the appellate courts need not consider issues unsupported by cogent argument). It likewise fails to set forth any argument under the doctrine of equitable tolling, which requires that the plaintiff "demonstrate that he or she acted diligently in pursuing his or her claim and that extraordinary circumstances beyond his or her control caused his or her claim to be filed outside the limitations period." *Fausto v. Sanchez-Flores*, 137 Nev., Adv. Op. 11, 482 P.3d 677, 682 (2021). Having therefore waived the issue, *see Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3, we need not consider it, but we nevertheless note that—despite having knowledge of facts indicating that BNYM lacked at interest in the property at the time it foreclosed—it does not appear from the record that LV Rental made any attempt to assert its claims within the relevant statutory periods. *See Fausto*, 137 Nev., Adv. Op. 11, 482 P.3d at 682 (concluding that appellant failed to show she acted in a diligent manner where "she made no attempt to file a complaint pending receipt of [further information]" when she otherwise had notice of her claims). And given the identity of the legal

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litigation malpractice, the damages for a malpractice claim do not accrue until the underlying litigation is complete." (internal quotation marks omitted)); *Day v. Zubel*, 112 Nev. 972, 977-78, 922 P.2d 536, 539 (1996) (providing that claims for malicious prosecution and civil rights violations resulting in wrongful conviction do not accrue until "final termination of the original criminal proceeding in the claimant's favor"). But LV Rental fails to cite any of these authorities or cogently demonstrate that the principles underlying them apply to the circumstances at issue in this case. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also Siragusa*, 114 Nev. at 1394 n.7, 971 P.2d at 808 n.7. Further, we note that those cases involved instances where the complained-of injury occurred within and as a direct result of the pending litigation, whereas here, LV Rental's injury occurred outside of litigation and as a result of its decision to pay BNYM $190,000 when it was on notice that BNYM may have lacked authority to foreclose.

issues in this and the prior action—i.e., the extent to which the HOA's foreclosure sale extinguished BNYM's interest and rendered its later foreclosure sale wrongful—LV Rental had every opportunity to assert its claims within the statutory period. *See* NRCP 20(a)(1) (providing that persons may join in an action as plaintiffs if "they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences," and if "any question of law or fact common to all plaintiffs will arise in the action"); NRCP 24(b)(1)(B) (providing that, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact"); NRCP 42(a)(2) (providing that, "[i]f [separate] actions before the court involve a common question of law or fact, the court may . . . consolidate the actions").

Accordingly, LV Rental has failed to demonstrate that it timely filed its claims. *See Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) (noting that when the complaint itself shows that a claim is time-barred, "the burden falls upon the plaintiff to satisfy the court that the bar does not exist" (internal quotation marks omitted)). And because we necessarily conclude that LV Rental's claims accrued at the time of BNYM's foreclosure and that it suffered a concrete, actionable injury when it tendered the funds in connection with that purported sale, we reject LV Rental's argument that the claims were not ripe for adjudication until the conclusion of the prior action.[7] *See Herbst Gaming, Inc. v. Heller*, 122 Nev.

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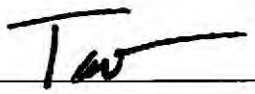
[7]We likewise reject LV Rental's contention that it lacked standing until the prior action concluded. "The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation."

877, 887, 141 P.3d 1224, 1231 (2006) ("A primary focus in [ripeness] cases has been the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, to yield a justiciable controversy."); *see also Conrad Shipyard, L.L.C. v. Franco Marine 1 LLC*, 431 F. Supp. 3d 839, 849 (E.D. La. 2020) (noting that "once a claim has accrued it is necessarily ripe" (quoting *Jones v. Allen*, 483 F. Supp. 2d 1142, 1149 (M.D. Ala. 2007))).

In light of the foregoing, we need not address the district court's ruling on claim preclusion, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



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cc: Hon. Nancy L. Allf, District Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

Schwartz v. Lopez, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). This generally requires that the party seeking relief "show a personal injury and not merely a general interest that is common to all members of the public." *Id.* Because LV Rental suffered a personalized injury as soon as it paid BNYM in connection with its foreclosure sale, LV Rental would have had standing to bring an action at that time.