

IN THE SUPREME COURT OF THE STATE OF NEVADA

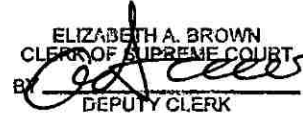
KK REAL ESTATE INVESTMENT  
FUND, LLC,  
Appellant,  
vs.  
SHOSHANI BASIM, AN INDIVIDUAL  
OR ASSIGNEE; AND HOA LAWYERS  
GROUP,  
Respondents.

KK REAL ESTATE INVESTMENT  
FUND, LLC,  
Appellant,  
vs.  
SHOSHANI BASIM, AN INDIVIDUAL  
OR ASSIGNEE,  
Respondent.

No. 83720

**FILED**

APR 21 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

No. 84616

*ORDER OF AFFIRMANCE*

These are consolidated appeals from a district court final judgment in a quiet title action (Docket No. 83720) and an order denying a motion for NRCP 60(b) relief (Docket No. 84616). Eighth Judicial District Court, Clark County; Crystal Eller, Judge.<sup>1</sup>

The district court granted summary judgment for respondent Shoshani Basim, reasoning that Basim had redeemed the foreclosed-upon property in compliance with NRS 116.31166(3)-(4) (2015) and thus retained legal title to the property despite appellant KK Real Estate Investment Fund (KKRE) having previously purchased the property at an HOA foreclosure sale. In doing so, the district court found that Basim's agent, Sarhir Shaba, tendered the redemption amount when Shaba appeared in person at KKRE's office with a check in hand and offering to pay whatever

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

amount KKRE's representative told him would be necessary to redeem the property.<sup>2</sup>

Thereafter, the district court held a bench trial to determine the additional damages to which Basim was entitled. The district court entered a judgment for Basim, which granted him title to the property and awarded him roughly \$126,000 in damages. KKRE then filed a motion to set aside the judgment under NRCP 60(b), which the district court denied. KKRE now appeals both the final judgment (Docket No. 83720) and the order denying NRCP 60(b) relief (Docket No. 84616).<sup>3</sup>

*Docket No. 83720*

KKRE contends that summary judgment was improper because (1) Basim failed to establish that Shaba was acting as his agent so as to have standing to redeem under NRS 116.3116(3)-(4) (2015); or, alternatively, (2) questions of material fact precluded summary judgment.

We disagree with both arguments. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court's decision to grant summary judgment de novo and recognizing that, in doing so, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party"). With respect to KKRE's first argument, Shaba's May 2021 declaration attested that he was

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<sup>2</sup>The district court's findings in this respect were based on a May 2021 affidavit submitted by Shaba. Shaba attested that he appeared at KKRE's office on June 29, 2018. Although the district court did not make a specific finding as to the date he appeared, it did find that Shaba's tender occurred before the 60-day redemption period expired on July 3, 2018.

<sup>3</sup>We address only those arguments that KKRE timely and coherently raised in district court and again in the opening brief. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011); *Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

the “manager” of the subject property, that he had an “equity interest” in the subject property, and that he had “all the legal right as interest holder and manager of the Property to represent Mr. Basim and [Shaba’s] interest in the Property.” Although KKRE’s counsel questioned Shaba’s relationship with Basim, KKRE did not produce any evidence showing Shaba was not Basim’s agent or otherwise contest the May 2021 declaration’s admissibility during the summary judgment motion practice.<sup>4</sup> Accordingly, the district court correctly determined that Basim was entitled to summary judgment on the issue of whether Shaba was his agent for purposes of having standing to redeem the property.

With respect to KKRE’s second argument, we are not persuaded that a genuine issue of material fact exists. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 (“The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”). In support of its argument that issues of material fact precluded summary judgment, KKRE’s opening brief contends as follows:

[e]ven assuming that Shaba’s testimony was entitled to any weight, the district court was left with a factual dispute as to [(1)] whether Basim was notified of the sale and [(2)] whether Basim took measures to redeem the Property.

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<sup>4</sup>At an April 13, 2021, hearing, KKRE’s counsel briefly articulated various concerns pertaining to a previous affidavit submitted by Shaba. To the extent those concerns could be construed as articulating an argument that Shaba’s subsequent May 2021 declaration was inadmissible, the basis for KKRE’s argument was that Shaba was not disclosed as a witness. And even that basis appears incorrect, as Basim’s counsel represented at the same hearing that he did disclose Shaba as a witness. Moreover, at that same hearing, the district court indicated that the proper means by which to challenge Shaba’s role as a potential witness would be to file a motion in limine, which KKRE never did.

As for the first contention, this factual dispute is not material because Basim's claims against KKRE did not implicate whether Basim received the HOA's foreclosure notices. While Basim's operative complaint contained a single allegation regarding failure to receive the foreclosure notices, this allegation was not pursued as a basis for relief in Basim's summary judgment motion practice, nor did it form any apparent basis for the district court's judgment. Accordingly, we are not persuaded that KKRE's first contention demonstrates the existence of a material factual dispute.

As for the second contention, taken in its literal sense, it does not create a genuine issue of material fact because KKRE cannot reasonably dispute that "Basim took [some] measures to redeem the Property." *Cf. Aldabe v. Adams*, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) ("When Rule 56 speaks of a 'genuine' issue of material fact, it does so with the adversary system in mind. The word 'genuine' has moral overtones."), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998). The opening brief elaborates on KKRE's second contention by explaining:

There was no valid basis for the district court to credit Shaba's version of events over KKRE's account, particularly when KKRE had presented business records supporting its position. Indeed, KKRE presented evidence showing that it . . . was willing to negotiate whatever amounts Basim believed to be improperly included.

Even with this elaboration, we are not persuaded that a genuine issue of material fact exists. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material . . ."). Namely, as indicated above, the district court granted summary judgment for Basim based on his having redeemed the property (via Shaba's efforts) before the statutory redemption period expired. Thus, KKRE's evidence showing that it agreed to extend the redemption deadline after it expired

did not form any apparent basis for the district court's judgment. Accordingly, we are not persuaded that KKRE's second contention in its opening brief demonstrates the existence of a material factual dispute.

In light of the foregoing, we affirm the district court's August 17, 2021, judgment challenged in Docket No. 83720.

*Docket No. 84616*

KKRE contends that the district court abused its discretion in denying the NRCP 60(b)(3) motion. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018) (reviewing for an abuse of discretion a district court's decision to deny NRCP 60(b) relief). In particular, KKRE contends that Basim's counsel committed "fraud" during a May 11, 2021, hearing wherein counsel represented that KKRE was unwilling to negotiate with Basim after the 60-day redemption period expired. KKRE contends that this representation was "fraud[ulent]" because an email chain showed that KKRE was, in fact, willing to negotiate with Basim after the redemption period expired.

We conclude that the district court was well within its discretion in denying KKRE's motion for two interrelated reasons. First, the district court expressly stated at the March 21, 2022, hearing on the NRCP 60(b) motion that, in rendering its August 17, 2021, judgment, it relied only on the parties' evidence and not the arguments of counsel. Second, and more importantly, the district court expressly found in its August 17, 2021, judgment that it was "irrelevant" whether KKRE gave Basim additional time to redeem after the statutory redemption period expired because Shaba had already redeemed the property on Basim's behalf before the expiration date.

As KKRE recognizes, "[w]hen a judgment is shown to have been procured by fraud upon the court, no worthwhile interest is served in

protecting the judgment.” *Estate of Adams v. Fallini*, 132 Nev. 814, 819, 386 P.3d 621, 625 (2016). Here, however, any alleged fraud committed by Basim’s counsel did not “procure[ ]” the judgment in Basim’s favor because counsel’s alleged fraudulent statement did not factor into the district court’s judgment.<sup>5</sup> Accordingly, we affirm the district court’s order denying the motion for NRCP 60(b) relief challenged in Docket No. 84616.

It is so ORDERED.

 , C.J.  
Stiglich

 , J.  
Lee

 , J.  
Bell

cc: Hon. Crystal Eller, District Judge  
Kristine M. Kuzemka, Settlement Judge  
Hong & Hong  
The Powell Law Firm  
David J. Winterton & Associates, Ltd.  
Kerry P. Faughnan  
HOA Lawyers Group, LLC  
Eighth District Court Clerk

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<sup>5</sup>We additionally note that the district court characterized the objectionable statements as counsel “trying to advocate for his client by saying a quippy-type statement.” We interpret this characterization as the district court having found that counsel merely misspoke and did not commit any sort of “fraud.”