

IN THE SUPREME COURT OF THE STATE OF NEVADA

8933 SQUARE KNOT TRUST, A
NEVADA TRUST,
Appellant,
vs.
BANK OF NEW YORK MELLON, F/K/A
THE BANK OF NEW YORK AS
TRUSTEE FOR THE CERTIFICATE
HOLDERS OF CWALT, INC., AND
ALTERNATIVE LOAN TRUST 2005-41
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-41,
Respondents.

No. 87301

FILED

OCT 17 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING*

This is an appeal from a district court order, certified as final under NRCP 54(b), granting a combined motion for summary judgment and motion to dismiss in an action to quiet title. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge. Reviewing the order de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008), and accepting the operative complaint's allegations as true, *id.*, we affirm in part, reverse in part, and remand.

Appellant 8933 Square Knot Trust (Square Knot) sued respondent Bank of New York Mellon (BNYM), seeking mainly to quiet title to the subject property. Square Knot's operative complaint asserted three claims that are at issue on appeal: (1) quiet title, based on the allegation that BNYM's deed of trust was extinguished as a matter of law under NRS 106.240; (2) violation of NRS Chapter 104 based on BNYM's failure to produce the original promissory note; and (3) violation of NRS 107.300,

which provides for liability when a lender “willfully fails” to provide payoff information regarding a secured loan.¹ The district court granted summary judgment on Square Knot’s first claim and dismissed Square Knot’s second and third claims. In doing so, the district court reasoned that (1) nothing triggered NRS 106.240’s 10-year time frame, (2) Nevada law does not require production of the original promissory note as a requirement to nonjudicially foreclose on a deed of trust, and (3) Square Knot’s operative complaint failed to sufficiently allege a violation of NRS 107.300.

1. NRS 106.240 claim

Square Knot argues that the former homeowner’s July 2010 default triggered NRS 106.240’s 10-year time frame. But Square Knot cites no authority for its argument. And the argument is contrary to our decision in *LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev., Adv. Op. 25, 534 P.3d 693 (2023). Namely, in *LV Debt Collect*, we held that recording a notice of default to institute nonjudicial foreclosure proceedings does not trigger NRS 106.240’s 10-year time frame. *Id.* at 695. If recording a notice of default cannot trigger NRS 106.240, it stands to reason that merely defaulting on a loan, in and of itself, is also insufficient to trigger NRS 106.240.

Square Knot alternatively contends that the loan became “wholly due” in April 2011 when the former homeowner filed for bankruptcy. Although Square Knot cites authorities for the proposition that a debt is deemed to be “accelerated” under bankruptcy law, none of

¹In *Otak Nevada, LLC v. Eighth Judicial District Court*, 129 Nev. 799, 809, 312 P.3d 491, 498 (2013), we reaffirmed that “this court has consistently analyzed a claim according to its substance, rather than its label.” Accordingly, we construe Square Knot’s operative complaint as asserting these three claims.

those authorities suggest that the former homeowner was obligated to pay off the entire loan balance upon filing for bankruptcy. In other words, we are not persuaded that filing a bankruptcy petition rendered the former homeowner's loan "wholly due" for purposes of NRS 106.240. *See, e.g., Ramanathan v. Bank of N.Y. Mellon*, No. 2:19-cv-02009-APG-EJY, 2021 WL 4486320, at *4 (D. Nev. Sept. 30, 2021) (rejecting the same argument made by Square Knot).

2. NRS Chapter 104 claim

As for Square Knot's NRS Chapter 104 claim alleging that BNYM has failed to produce the original promissory note, the district court found in its May 25, 2023, order that such a claim is not legally cognizable. In particular, the district court reasoned that NRS Chapter 107's nonjudicial foreclosure statutes do not require production of the original promissory note. Square Knot has presented no legal authority suggesting otherwise, and indeed, persuasive federal authority to the contrary exists.² *See, e.g., Pajarillo v. Countrywide Home Loans, Inc.*, No. 2:09-cv-0078-LDG-GWF, 2009 WL 10659056, at *2 (D. Nev. Sept. 28, 2009) ("[T]here is no requirement under Nevada law that a trustee or beneficiary have possession of the note before proceeding with foreclosure."); *Lawrence v. Bank of Am.*, No. 2:09-cv-2061-JCM-LRL, 2010 WL 11531236, at *2 (D. Nev. Feb. 10, 2010) (stating Nevada has no requirement for a foreclosing entity to be in possession of the note). Thus, we are not persuaded that the district court erred in dismissing Square Knot's NRS Chapter 104 claim.

²While Nevada's Foreclosure Mediation Program requires a lender to produce a certified copy of the original promissory note, *see* NRS 107.086(5), this case does not involve the Program.

3. NRS 107.300 claim

As for Square Knot's NRS 107.300 claim, however, we conclude that reversal is warranted. The district court dismissed this claim on the ground that Square Knot failed to sufficiently allege "what information it requested from BoNYM, what information BoNYM failed to provide, and any facts supporting a willful violation for the alleged failure to respond." The district court further found that Square Knot failed to "allege sufficient damages to warrant anywhere close to the \$15,000 in damages as a result of a minimal alleged 'non-willful' delay."³ But having reviewed Square Knot's amended complaint, and in particular Paragraphs 35 and 36, we conclude that Square Knot's amended complaint sufficiently apprised BNYM regarding the contours of Square Knot's NRS 107.300 claim, such that its NRS 107.300 claim satisfied NRCP 12(b)(5)'s motion-to-dismiss standard. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672; *cf. Harris v. State*, 138 Nev. 390, 407, 510 P.3d 802, 807 (2022) ("Under our notice-pleading standard, we liberally construe the pleadings for sufficient facts that put the defending party on adequate notice of the nature of the claim and relief sought." (internal quotation marks and alteration omitted)); NRCP 8(e) ("Pleadings must be construed so as to do justice."). We note, however, that NRS 107.300 does not entitle Square Knot to any relief from what appears to be BNYM's now-completed foreclosure sale. *See* NRS 107.300(1) (entitling a successful plaintiff to "\$300 and any actual damages suffered").


³The district court's reference to a "non-willful" delay appears to be a typographical error, as NRS 107.300 provides liability only for a "willful[]" failure to comply with NRS 107.200 or 107.210.

We emphasize that our reversal on Square Knot's NRS 107.300's claim is based solely on *Buzz Stew's* NRCP 12(b)(5) standard of review. We also note that Square Knot's counsel has raised similar NRS 107.300-related arguments in two other pending appeals: *RH Kids, LLC v. Nationstar Mortg., LLC*, Docket No. 86634 and *Danny, LLC v. The Bank of N.Y. Mellon*, Docket No. 86826. Any differences in the analysis of the NRS 107.300-related issues in these three appeals is due to the allegations raised in each case's operative complaint, combined with the specific arguments raised in the appellate briefs in each case. *Cf. Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) (observing that this court relies on the parties to frame the issues and that "[w]e will not supply an argument on a party's behalf but review only the issues the parties present" (citing *Pelkola v. Pelkola*, 137 Nev. 271, 273, 487 P.3d 807, 809 (2021))). Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Danielle K. Pieper, District Judge
Stephen E. Haberfeld, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk