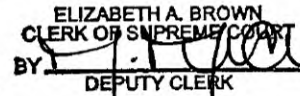
IN THE SUPREME COURT OF THE STATE OF NEVADA

BIG ROCK ASSETS MANAGEMENT, LLC,
Appellant,
vs.
NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING,
Respondent.

No. 86675



NOV 2 1 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a quite title action. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In 2004, Kevin and Denesha Hadly (the Original Borrowers) purchased real property secured by a deed of trust. In 2009, they filed for bankruptcy and, in 2014, received a discharge. In 2015, Green Tree Servicing LLC, the beneficiary under the deed of trust, recorded a Notice of Default and Election to Sell Under Deed of Trust. The Notice stated that as of October 1, 2010, the Original Borrowers were in default of their mortgage obligation and that they may have the right to reinstate their account by paying all past due payments plus costs. The Original Borrowers' HOA subsequently foreclosed on the property for unpaid assessments, after which the property was acquired by appellant Big Rock Assets Management, LLC. In 2020, Green Tree recorded a notice of recission of the 2015 Notice of Default and assigned their beneficiary interest in the property to respondent Shellpoint Mortgage Servicing. In 2021, Shellpoint recorded a Notice of Default and Election to Sell Under Deed of Trust which, similar to the 2015 Notice of Default, stated that the

24-44571

Original Borrowers were in default of their loan as of October 1, 2010, and all past-due payments and costs were due as a condition of reinstatement.

Big Rock sued Shellpoint, seeking a declaration that Shellpoint's deed of trust was terminated or extinguished by the operation of NRS 106.240 because the Original Borrowers' loan became "wholly due" in 2009 when they filed for bankruptcy and/or in 2010 when they defaulted on the loan. The district court found that neither the 2009 bankruptcy nor the 2010 default rendered the debt "wholly due" so as to trigger NRS 106.240's ten-year clock. The court found alternatively that, even if the ten-year clock was triggered by the recording of the 2015 Notice of Default, Green Tree's 2020 notice of recission reset the clock. The court found that the deed of trust was not extinguished as a matter of law and granted Shellpoint's motion to dismiss the complaint.

On appeal, Big Rock argues that the district court erred in dismissing the complaint for failure to state a claim pursuant to NRCP 12(b)(5). We review this matter de novo both because it addresses a dismissal under NRCP 12(b)(5) and because the issue on review is one of contract interpretation, namely the interpretation of the terms in the deed of trust.[1] *Deutsche Bank Nat'l Tr. Co. v. Fid. Nat'l Title Ins. Co.*, 139 Nev.,

[1]Big Rock argues that the district court considered documents outside of the pleadings and therefore the dismissal order should be treated as an order granting summary judgment. *See* NRCP 12(d). However, Big Rock does not identify any documents other than the deed of trust, a document made publicly available through the Clark County Recorder's Office, and thus properly considered by the district court in ruling on the motion to dismiss. *See Deutsche Bank Nat'l Tr. Co. v. Fid. Nat'l Title Ins. Co.*, 139 Nev., Adv. Op. 45, 536 P.3d 915, 921-22 (2023) (noting that a district court "may take into account matters of public record" when ruling on a Rule

Adv. Op. 45, 536 P.3d 915, 921 (2023) ("We review a dismissal under NRCP 12(b)(5) de novo."); *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (reviewing contract interpretation de novo).

NRS 106.240, Nevada's ancient-mortgage statute, provides that a lien created by a mortgage or deed of trust that has not been otherwise satisfied will be presumed discharged ten years after the debt becomes wholly due. A debt becomes "wholly due" according to either (1) the terms in the mortgage or deed of trust, or (2) any recorded, written extension of those terms. *LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev., Adv. Op. 25, 534 P.3d 693, 697 (2023); *Posner v. U.S. Bank Nat'l Ass'n*, 140 Nev., Adv. Op. 22, 545 P.3d 1150, 1153 (2024). For a deed of trust to be presumed satisfied for the purposes of NRS 106.240, "ten years [must] have passed after the last possible date the deed of trust is in effect, as shown by the maturity date on the face of the deed of trust or any recorded extension thereof." *LV Debt Collect*, 139 Nev., Adv. Op. 25, 534 P.3d at 699. Because no recorded extension exists in this case, the maturity date of October 1, 2034, in the recorded deed of trust controls as the last possible date for the deed to be in effect, and the statute's ten-year clock cannot begin until then.

Big Rock nevertheless argues that the maturity date in the recorded deed of trust is not dispositive because, under the terms of the deed of trust, (1) the filing of either the 2015 or 2021 Notice of Default accelerated the loan and subsequently backdated the date the loan became "wholly due" to October 1, 2010, the date of default; and (2) the loan became "wholly due" when the Original Borrowers filed for bankruptcy in 2009. We conclude

---

12(b)(5) motion to dismiss without converting it to a motion for summary judgment (internal quotation marks omitted)).

that neither of these occurrences made the debt "wholly due" for the purposes of NRS 106.240.

This court has explored whether other events besides the maturing of a debt may start the NRS 106.240 clock. In *LV Debt Collect*, we determined that a notice of default did not accelerate a loan secured by a deed of trust where the discretionary acceleration clause in the deed of trust required the borrower to first fail to cure the default by the date specified. 139 Nev., Adv. Op. 25, 534 P.3d at 698. Because the borrower in *LV Debt Collect* had not yet failed to cure the default, the acceleration clause was not triggered, and the loan did not become "wholly due." *Id.* And in any event, we held that the filing of a notice of default may not automatically accelerate a loan, because NRS 107.080(2)-(3) requires a notice of default to give a borrower thirty-five days to cure, which is antithetical to an acceleration. *Id.* We also held that the Legislature did not intend for the filing of a notice of default to trigger NRS 106.240's ten-year clock, otherwise they would have added it to the statutory list of documents that can render a loan "wholly due." *Id.* at 699. In *Posner*, we explored whether a debt could become "wholly due" pursuant to judicial foreclosure. 140 Nev., Adv. Op. 22, 545 P.3d at 1153. We held that because the deed of trust at issue did not mention judicial foreclosure actions, the alleged acceleration clause in the judicial foreclosure complaint did not trigger NRS 106.240's ten-year clock. *Id.* Additionally, we reiterated our conclusion in *LV Debt Collect* that "when there is no recorded extension of the due date, the terms of the mortgage or deed of trust dictate when the debt becomes wholly due." *Id.*

Here, the language in the acceleration clause in the deed of trust is identical to the language in the acceleration clause at issue in *LV*

Debt Collect. Therefore, as in *LV Debt Collect*, the filing of the Notice of Default did not trigger the acceleration clause because the borrowers still had the opportunity to cure the default, thus the debt did not become "wholly due" for purposes of the statute. 139 Nev., Adv. Op. 25, 534 P.3d at 698. We also note that, merely triggering the power of sale, as the judicial foreclosure complaint did in *Posner*, is insufficient to trigger NRS 106.240 absent explicit language in the deed of trust. Therefore, we conclude that neither of the Notices of Default filed here made the loan "wholly due" so as to trigger the statutory ten-year clock.

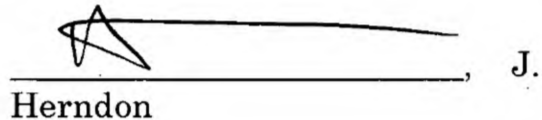
Turning to the bankruptcy issue, Big Rock concedes that this court has determined that a bankruptcy *discharge* does not make an obligation "wholly due" for the purposes of NRS 106.240. *W. Coast Servicing, Inc. v. Kassler*, No. 84122, 2023 WL 4057073 (Nev. June 16, 2023) (Order of Reversal and Remand). Big Rock nonetheless argues that we have made no determination as to whether the *filing* of a bankruptcy petition makes a debt "wholly due." Big Rock fails, however, to identify any language in the deed of trust suggesting that the filing of a bankruptcy petition would automatically accelerate the debt. *See Posner*, 140 Nev., Adv. Op. 22, 545 P.3d at 1153 (explaining that, under the plain language of NRS 106.240, absent a recorded extension of the due date, the terms of the mortgage or deed of trust control when the debt becomes "wholly due") Thus, we conclude that under the language of the deed of trust, the filing of the bankruptcy petition could not have accelerated the due date on the loan, and the ten-year time period under NRS 106.240 could not have been triggered.

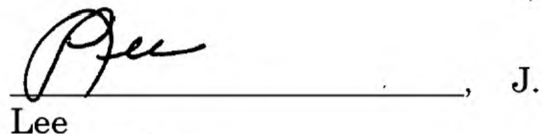
As a final consideration, we note that our holding today negates the need to address the public policy arguments raised by Shellpoint and

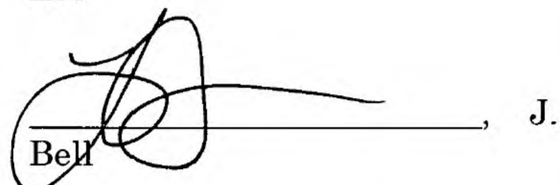
the *Amici Curiae*. Shellpoint argues that Big Rock's interpretation of NRS 106.240 may incentivize opportunistic investor-plaintiffs to initiate and then delay foreclosure litigation in order to run out the statutory clock. Shellpoint points to the years of federal and state legislative efforts undertaken to resolve a previous, related wave of litigation arising from HOA foreclosures, and argues that Big Rock's current claim would undermine these efforts. The *Amici Curiae*, led by the Federal Housing Finance Agency (FHFA), also expresses concern that Big Rock's claim, if granted, would run afoul of the Housing Economic Recovery Act. It further argues that an interpretation of NRS 106.240 that allows for an automatic termination of liens ten years after a borrower's loan default or bankruptcy would create a detrimental effect on the secondary mortgage market. Because we affirm the district court's judgment, our holding today does not analyze or otherwise address these concerns.

We hold that neither the filing of the Notices of Default nor the filing of the bankruptcy petition deemed the loan "wholly due" for purposes of NRS 106.240. We therefore conclude the district court did not err in dismissing the complaint, and we

ORDER the judgment of the district court AFFIRMED.


_______________, J.
Herndon


_______________, J.
Lee


_______________, J.
Bell

cc: Hon. Crystal Eller, District Judge
Ara H. Shirinian, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk