IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EPIC PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
SPECIALIZED LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 87546-COA

JAN 2 3 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Epic Properties, LLC (Epic) appeals from a final order in a quiet title action. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Epic sued respondent Specialized Loan Servicing, LLC (SLS) to quiet title and to halt SLS's pending foreclosure of its deed of trust. Epic's operative complaint alleged it was the owner of the relevant property and that a deed of trust encumbered the property. Epic further alleged that the deed of trust had been extinguished as a matter of law under NRS 106.240. That statute provides that a lien on real property is conclusively presumed to be discharged "10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become[s] wholly due." NRS 106.240. According to Epic, the notice of default filed in 2022 demonstrated that the loan secured by the deed of trust became "wholly due" on April 1, 2010, when the former homeowner defaulted by failing to make the required payments. Epic also contended that the lender sent a letter to the former homeowner setting forth its

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intention to accelerate the loan if the borrower failed to cure the default. Thus, Epic argued that NRS 106.240 extinguished the deed of trust by April 1, 2020, such that the deed of trust was no longer enforceable. Epic also contended that SLS did not comply with NRS Chapter 107, the note and deed of trust had been split and not reunified, and SLS was not authorized to act on behalf of the beneficiary of the deed of trust, the Federal Home Loan Mortgage Corporation, also known as Freddie Mac. Epic accordingly sought to quiet title to the property in its favor, as well as injunctive and declaratory relief. Epic also set forth a claim of wrongful foreclosure.

SLS thereafter filed a motion to dismiss or, in the alternative, a motion for summary judgment. SLS contended that there was no genuine dispute of fact as to whether NRS 106.240 extinguished the deed of trust, as the loan had not become wholly due in 2010. SLS also contended that it was the servicer of the deed of trust authorized to act on behalf of Freddie Mac. SLS further asserted that it, acting on behalf of Freddie Mac, possessed the note such that the note and the deed of trust were reunified. In addition, SLS filed documents and affidavits in support of its motion, which included information related to the deed of trust, the note, its authority to act as the servicer of the deed of trust, and the recorded 2022 notice of default and election to sell.

Epic opposed the motion, contending that the lender sent to the original borrower a letter indicating the default and informing the borrower of the right to provide payment to cure the default. Epic asserted that the letter constituted a notice that the loan had been accelerated such that the outstanding amount should have been considered wholly due and that the deed of trust should therefore be extinguished pursuant to NRS 106.240. Epic also asserted that there were genuine disputes of fact as to whether

SLS had the authority to act on Freddie Mac's behalf and whether the note and the deed of trust had been reunified. In addition, Epic requested additional time to conduct discovery pursuant to NRCP 56(d).

The district court issued a written order in which it elected to treat the motion as one for summary judgment as it relied upon documents outside of the pleadings. The court concluded that there was no genuine dispute of fact such that SLS was entitled to summary judgment in its favor. The court ruled that the outstanding amount of the loan had not become wholly due for purposes of NRS 106.240 because the borrower had been provided an opportunity to cure the default. Further, the court concluded that the undisputed facts demonstrated that SLS complied with NRS Chapter 107, the note and deed of trust were reunified, and that SLS was authorized to act on behalf of Freddie Mac. The court also denied Epic's request for a continuance to conduct discovery pursuant to NRCP 56(d). The district court accordingly granted SLS's motion for summary judgment. Epic subsequently filed a motion to alter or amend the district court's order, which the district court denied, concluding there was no basis to alter or amend the order granting summary judgment. This appeal followed.

On appeal, Epic argues that the district court erred by granting SLS's motion for summary judgment. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence "must be viewed in a light most favorable to the

nonmoving party." *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Epic contends that there remains a genuine dispute of fact as to whether the deed of trust was extinguished by NRS 106.240. Epic contends that the terms of the deed of trust permitted acceleration of the loan and the lender sent the former homeowner a notice indicating the acceleration of the loan secured by the deed of trust more than ten years ago and, as such, NRS 106.240 should have extinguished the deed of trust.

However, the Nevada Supreme Court has recently considered and rejected a similar argument because "(1) a Notice of Default is not identified in NRS 106.240 as a document that can render a secured loan 'wholly due' for purposes of triggering the statute's 10-year time frame, (2) Nevada law requires a cure period following a Notice of Default before acceleration of the entire outstanding debt, and (3) acceleration can only occur if its exercise is clear and unequivocal." *LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev., Adv. Op. 25, 534 P.3d 693, 699 (2023). The court also explained that, even if a notice provided to the borrower indicating a default in certain circumstances could render a loan wholly due, a notice that declared sums were due and payable but also provided the borrower with the opportunity to cure the default constituted the sort of conflicting language that did not amount to a clear and unequivocal announcement of the lender's intention to declare a debt wholly due. *Id.*

In its opposition to SLS's motion for summary judgment, Epic acknowledged that any notice provided to the borrower indicating a default and a potential acceleration of the loan had also afforded the borrower with the opportunity to cure the default. The district court recognized that a notice of an acceleration of a debt based on the borrower's default that

provides the borrower with the opportunity to cure the default without paying the portion of the principal and interest that would not have been due had no default occurred does not amount to a clear and unequivocal announcement of a lender's intent to declare the debt wholly due at that time. *See id.* As Epic alleged that the borrower had been afforded an opportunity to cure the default, there was no genuine dispute that NRS 106.240 extinguished the lien created by the deed of trust as the undisputed facts established that the debt did not become wholly due in 2010.

Thus, based on the foregoing analysis, we conclude that Epic's argument that the district court erred in granting summary judgment in favor of SLS is without merit.[1]

Next, Epic contends that the district court abused its discretion by refusing to grant it additional time for discovery to oppose SLS's motion for summary judgment. We review the denial of a request for a continuance to conduct discovery pursuant to NRCP 56(d) for abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). NRCP 56(d) provides that a district court may allow additional time to conduct discovery if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011). In addition, such a request is only appropriate

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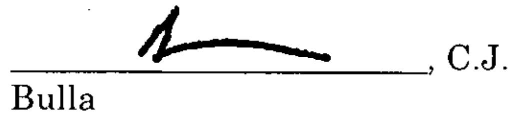
[1]Epic does not challenge the district court's decision to grant summary judgment in favor of SLS as to the additional claims raised in its complaint. As a result, Epic has waived any argument related to the same. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived).

when the movant expresses how further discovery will create a genuine dispute of material fact. *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62.

Here, Epic requested a continuance to conduct discovery but did not specifically explain why it could not present sufficient facts to justify its opposition or how the additional information it hoped to obtain through discovery would create a genuine dispute of material fact. The district court considered Epic's request but concluded that Epic failed to demonstrate that discovery could create a genuine dispute of material fact. Under these circumstances, the district court was well within its discretion to deny a continuance for discovery. *See id.* at 117-18, 110 P.3d at 62.

In light of the foregoing, we conclude that Epic is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]



_______________________, C.J.
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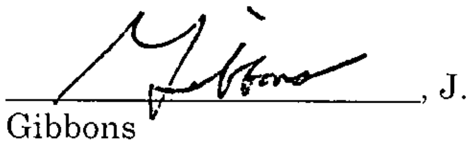

_______________________, J.
Gibbons

_______________________, J.
Westbrook

cc: Hon. Veronica Barisich, District Judge
Hong & Hong
McCarthy & Holthus, LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk

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[2]Given our resolution of this matter, we need not address SLS's remaining appellate arguments.