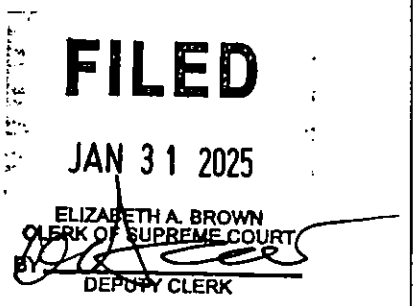
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
Appellant,
vs.
SPECIALIZED LOAN SERVICING, LLC, A LIMITED LIABILITY COMPANY,
Respondent.

No. 87701-COA



ORDER OF AFFIRMANCE

RH Kids, LLC (RH) appeals from a final order in a quiet title action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

RH sued respondent Specialized Loan Servicing, LLC (SLS) to quiet title and to halt SLS's pending foreclosure of its deed of trust. RH's operative complaint alleged it was the owner of the relevant property and that a deed of trust encumbered the property. RH 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 RH, the notice of default recorded in 2022 demonstrated that the loan secured by the deed of trust became "wholly due" at some point in 2011 when the former

homeowners defaulted by failing to make the required payments and the lender sent a letter to the former homeowners setting forth its intention to accelerate the loan if the borrower failed to cure the default. In addition, RH asserted that the former homeowners filed for bankruptcy protection in 2011, and the bankruptcy court filings accelerated the loan such that the loan became wholly due at that time. Thus, RH argued that NRS 106.240 extinguished the deed of trust by 2021 or 2022, such that the deed of trust was no longer enforceable.

RH also contended the note and deed of trust had been split and not reunified and that SLS did not comply with NRS 107.200-.300 because it failed to provide RH with a statement regarding the debt secured by the deed of trust. RH accordingly sought to quiet title to the property in its favor, as well as injunctive and declaratory relief. In addition, RH set forth a claim of wrongful foreclosure. RH also moved for a preliminary injunction to halt the pending sale of the relevant property and the district court later granted its motion.

SLS thereafter filed a motion to dismiss. SLS contended that there was no genuine dispute of material fact as to whether NRS 106.240 extinguished the deed of trust, as the loan had not become wholly due in 2011. SLS further asserted that it possessed the note such that the note and the deed of trust were reunified and noted that the publicly recorded 2022 notice of default contained information demonstrating that it possessed the note. In addition, SLS asserted that RH failed to state a claim for relief as to its allegations under NRS 107.200-.300 because RH acknowledged that it did not mail its request for a statement regarding the debt to the correct party and did not sufficiently allege that SLS willfully

failed to send the statement. SLS further asserted that RH was not entitled to any additional relief and urged the district court to dissolve the preliminary injunction.

RH opposed the motion and asserted that its allegations were sufficient to state valid claims against SLS. It also acknowledged that the district court could review several documents without converting the motion to one for summary judgment as it referenced those documents in the operative complaint, including the recorded 2022 notice of default, the note, bankruptcy court filings, and letters seeking a statement of the debt. However, RH contended that, even with consideration of those documents, dismissal was not warranted.

The district court ultimately entered a written order granting the motion to dismiss. First, the district court concluded that RH's NRS 106.240 claim failed because the terms of the deed of trust provided an opportunity to cure a default and any letter sent to the original homeowners indicating the lender's intent to accelerate the loan based on their default also offered them an opportunity to cure the default. The court also concluded that the original homeowners' bankruptcy proceeding did not render the debt secured by the deed of trust wholly due and, thus, the bankruptcy proceeding did not trigger the ten-year period under NRS 106.240. Second, the court concluded that the 2022 recorded notice of default demonstrated that SLS possessed the note such that the note and the deed of trust were unified and, accordingly, RH's claim related to the same failed. Third, the court concluded that RH failed to state a claim based on NRS 107.200-.300 because RH did not allege that it mailed the request for information to the beneficiary of the deed of trust, SLS, as required by

NRS 107.270. Finally, the district court concluded that RH was not entitled to relief on any of its additional claims and dissolved the preliminary injunction.

RH 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 SLS's motion to dismiss. This appeal followed.

On appeal, RH challenges the district court's order granting the motion to dismiss. We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff's factual allegations as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

Because Nevada is a "notice-pleading" jurisdiction, *see* NRCP 8(a), a complaint need only set forth a short and plain statement with sufficient facts to demonstrate the necessary elements of a claim for relief so that the opposing party "has adequate notice of the nature of the claim and relief sought," *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (discussing Nevada's liberal notice pleading standard). We "liberally construe pleadings to place

matters into issue which are fairly noticed to an adverse party." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (citation omitted).

First, RH contends that the district court erred by dismissing its claim that the deed of trust was extinguished by NRS 106.240 because the terms of the deed of trust permitted acceleration of the loan and the lender sent the former homeowners a notice indicating the acceleration of the loan secured by the deed of trust more than ten years ago. As a result, RH asserts that the debt secured by the deed of trust became wholly due more than ten years ago and that NRS 106.240 therefore extinguished the deed of trust.

However, the supreme court has recognized that NRS 106.240 "plainly states that a debt become[s] wholly due only according to either of two things: (1) the terms thereof, referring to the mortgage or deed of trust, or (2) any recorded written extension thereof." *Posner v. U.S. Bank Nat'l Ass'n*, 140 Nev., Adv. Op. 22, 545 P.3d 1150, 1153 (2024) (internal quotation marks omitted). In addition, the supreme court has explained that the recording of a notice of default does not cause a debt to become wholly due 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.*

Here, RH acknowledged that the deed of trust and any notice provided to the original homeowners indicating a default afforded them with the opportunity to cure a default. The district court recognized that, because the original homeowners were provided with the opportunity to cure the default, there was no clear and unequivocal announcement of a lender's intent to declare the debt wholly due. *See id.* Thus, because the terms of the deed of trust did not render the debt wholly due upon the original homeowners' default and any correspondence related to the homeowners' default similarly afforded the original homeowners with the opportunity to cure the default, NRS 106.240's ten-year period was not triggered by either the default or the lender's letter concerning the default. In light of the foregoing, RH failed to sufficiently allege facts demonstrating that it was entitled to relief based on NRS 106.240 stemming from the original homeowners' default or a letter related to the same, and we conclude that RH is not entitled to relief based on this argument.

Second, RH contends that, under the terms of the deed of trust, the former homeowners' 2011 bankruptcy proceeding accelerated the loan secured by the deed of trust, which caused the loan to become wholly due at that time. RH further asserts that, because the debt secured by the deed of trust became wholly due pursuant to the bankruptcy proceedings more than ten years ago, the deed of trust was extinguished pursuant to NRS 106.240.

RH concedes that the supreme court has determined that a bankruptcy discharge does not make an obligation "wholly due" for the purposes of NRS 106.240. *See W. Coast Servicing, Inc. v. Kassler*, No. 84122, 2023 WL 4057073, at *1 (Nev. June 16, 2023) (Order of Reversal and Remand). But RH nonetheless argues the original borrowers' filing of a bankruptcy petition made the debt wholly due for purposes of triggering NRS 106.240. RH also contends that SLS's predecessor filed a motion for relief from the automatic stay in the bankruptcy proceeding, which it asserts caused the debt to become wholly due.

RH fails, however, to identify any language in the deed of trust suggesting that the filing of a bankruptcy petition or a motion for relief from an automatic stay would 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 and a motion for relief from an automatic stay could not have accelerated the due date on the loan, and the ten-year period under NRS 106.240 could not have been triggered by the filing of those documents. Considering the foregoing, RH failed to sufficiently allege facts demonstrating that it was entitled to relief based on NRS 106.240 stemming from the original homeowners' bankruptcy filings, and we conclude that RH is not entitled to relief based on this argument.

Third, RH contends that the district court erred by dismissing its claim that the note and the deed of trust were not unified. RH asserts that, because SLS was not the holder of the note, it was precluded from

enforcing the note and the deed of trust. RH further argues that the district court should not have relied upon the 2022 recorded notice of default when reviewing this issue under a motion to dismiss standard.

In dismissing this claim, the district court relied on the 2022 recorded notice of default and concluded that the document demonstrated that SLS held the note and that it was the beneficiary of the deed of trust. The district court therefore concluded that SLS was entitled to enforce the note and the deed of trust.

As stated previously, RH's amended complaint referred to the 2022 recorded notice of default and it acknowledged in its opposition to the motion to dismiss that the district court could properly rely on that document in light of the operative complaint's references to that document. Because RH acknowledged that the district court could properly review the 2022 recorded notice of default when it evaluated the motion to dismiss, it has waived this issue.[1] *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").

Moreover, as acknowledged by RH, because the note was endorsed in blank, it was payable to the bearer. *See* NRS 104.3205(2) (explaining that an instrument endorsed in blank is payable to bearer and

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[1]In addition, the 2022 recorded notice of default was a matter of public record and RH relied on that document in its amended complaint, and thus it was properly considered by the district when ruling on the motion to dismiss. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993); *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015).

"may be negotiated by transfer of possession alone"); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 523, 286 P.3d 249, 261 (2012) (stating "a note initially made payable to order can become a bearer instrument, if it is endorsed in blank" (internal quotation marks omitted)). Because SLS was the beneficiary of the deed of trust and it possessed the note, it was entitled to enforce both the note and the deed of trust. *See id.* at 524, 286 P.3d at 262. In light of the foregoing, RH fails to demonstrate that the district court erred by dismissing this claim, and we conclude that RH is not entitled to relief based on this argument.

Fourth, RH contends that the district court erred by dismissing its claim that SLS violated NRS 107.200-.300 because it failed to provide information concerning the debt secured by the deed of trust. NRS 107.200 provides that "the beneficiary of a deed of trust . . . shall, within 21 days after receiving a request from a person authorized to make such a request . . . cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement regarding the debt secured by the deed of trust." In addition, NRS 107.270 states that the request for a statement regarding the debt "must be made to the address to which the periodic payments under the note are made. If no periodic payments are made under the note, the request must be mailed to the address of the beneficiary listed on the note or deed of trust."

Here, RH did not allege that it mailed a request to the address of the beneficiary of the deed of trust listed on the note or the deed of trust, or that it mailed such a request to the address to which periodic payments under the note were made. Rather, RH alleged that it mailed the request to a different entity, the trustee of the deed of trust, and not to SLS as the

beneficiary of the deed of trust. Based on those allegations, the district court concluded that RH failed to sufficiently allege that it properly made a request to SLS for a statement regarding the debt under NRS 107.200. Because RH failed to allege that it properly requested a statement regarding the debt from SLS, we conclude that the district court did not err by dismissing this claim.[2]

In light of the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

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[2]RH does not challenge the district court's decision to dismiss any of the other claims raised in its complaint. As a result, RH 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).

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Kathleen E. Delaney, District Judge
Persi J. Mishel, Settlement Judge
Hong & Hong
Tiffany & Bosco, P.A./Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk