

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNS FUND, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A., A
NATIONAL BANKING ASSOCIATION,
Respondent.

No. 87662

FILED

FEB 14 2025

ELIZABETH A. DROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in an action to quiet title. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Appellant ARNS Fund sued respondent Bank of America, seeking to quiet title and halt Bank of America's pending foreclosure of its deed of trust. ARNS's operative complaint primarily alleged that Bank of America's 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 wholly due." NRS 106.240. According to ARNS, the loan secured by Bank of America's deed of trust became "wholly due" in July 2010 when the former homeowner first missed a payment on their loan. Alternatively, ARNS argued that the loan became "wholly due" when Bank of America or its predecessor sent the former homeowner a letter indicating their intent to accelerate the loan. Thus, ARNS argued, NRS 106.240 extinguished Bank of America's deed of trust by July 2020 or shortly thereafter, such that the deed of trust was no longer enforceable.


Bank of America moved to dismiss, which the district court granted on the ground that ARNS’s arguments were legally unsupportable and therefore failed to assert a claim for which relief could be granted. *Cf. Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (observing that dismissal under NRCP 12(b)(5) is appropriate when, accepting the complaint’s factual allegations as true, the plaintiff could prove no set of facts for which relief can be granted).

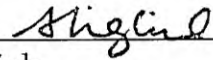
On appeal, ARNS reiterates its argument that the former homeowner’s July 2010 default or a purported notice-of-acceleration letter triggered NRS 106.240’s 10-year time frame. But ARNS cites no authority for its argument that either a homeowner’s default on their loan or such a letter could override NRS 107.080’s 35-day cure period. Moreover, and relatedly, ARNS’s arguments are 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), which likewise referenced NRS 107.080’s cure period. 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 in part because of the statutory cure period. *Id.* at 695. If recording a notice of default is insufficient to trigger NRS 106.240, it stands to reason that merely defaulting on a loan, or sending a letter informing the homeowner of their default—both of which occur *before* a notice of default is recorded—are also insufficient to trigger NRS 106.240. And to the extent that ARNS contends that the district court had to accept its “allegation” that the loan became wholly due in July 2010 or sometime shortly thereafter, we are not persuaded. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (“[T]he court is not required to accept legal conclusions cast in the form of factual allegations” (internal quotation

marks omitted)). Accordingly, we affirm the district court's order granting Bank of America's motion to dismiss and decline to consider Bank of America's arguments regarding 12 U.S.C. § 4617 because they are moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment."). Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Mary Kay Holthus, District Judge
Stephen E. Haberfeld, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Fennemore Craig P.C./Reno
Eighth District Court Clerk