IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BDJ INVESTMENTS, LLC,
Appellant,
vs.
US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET BACK CERTIFICATES SERIES 2005-A8,
Respondent.

No. 88128-COA

FILED
FEB 14 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

BDJ Investments, LLC (BDJ) appeals from a final order in a quiet title action. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

BDJ sued respondent US Bank National Association (US Bank) to quiet title and to halt US Bank's pending foreclosure of its deed of trust. BDJ's complaint alleged it was the owner of the relevant property and that a deed of trust encumbered the property. BDJ 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 BDJ, the loan secured by the deed of trust became "wholly due" in 2009, when the former homeowner defaulted by failing to make the required payments and US Bank's predecessor recorded a notice of default. Thus, BDJ argued that NRS 106.240 extinguished the deed of trust because more than ten years

had passed since the loan became wholly due, such that the deed of trust was no longer enforceable. BDJ accordingly sought to quiet title to the property in its favor, as well as injunctive and declaratory relief.

US Bank filed its answer. BDJ later filed a motion for judgment on the pleadings or for summary judgment, in which it contended that the undisputed facts established that the 2009 notice of default caused the debt to become wholly due such that NRS 106.240 extinguished the deed of trust. US Bank opposed BDJ's motion and filed a countermotion for summary judgment. US Bank asserted that, under the terms of the deed of trust, the 2009 notice of default was insufficient to cause the debt to become wholly due. US Bank therefore contended that the deed of trust was not extinguished. BDJ thereafter opposed US Bank's countermotion for summary judgment. The initial district court judge entered an order denying both motions. That judge found that the 2009 notice of default contained conflicting and confusing language as to whether the debt had become wholly due and therefore concluded that a genuine dispute of fact remained as to whether the 2009 notice of default caused the debt to become wholly due such that NRS 106.240 extinguished the deed of trust.

US Bank subsequently filed a motion for reconsideration of the district court's order denying its motion for summary judgment. US Bank notified the district court that the Nevada Supreme Court had recently issued a decision in which it explained that a notice of default of the sort at issue in this matter did not render a debt wholly due for purposes of triggering NRS 106.240. *See LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev., Adv. Op. 25, 534 P.3d 693, 699 (2023). US Bank accordingly urged the court to reconsider its decision denying summary judgment and contended that, in light of the supreme court's decision in *LV*

Debt Collect, no genuine dispute of fact remained as to whether NRS 106.240 extinguished the deed of trust. BDJ opposed the motion for reconsideration.

The motion for reconsideration was reviewed by a successor district court judge, who ultimately granted the motion. The successor judge reviewed the *LV Debt Collect* decision and found that it was appropriate to reconsider the previous denial of summary judgment as a new issue of law was raised. The successor judge thereafter concluded that, following the decision in *LV Debt Collect*, there was no genuine dispute that the deed of trust provided that the debt became wholly due on July 1, 2035, and the 2009 notice of default did not provide a clear and unequivocal statement of the lender's intent to accelerate the debt for purposes of NRS 106.240. The successor judge accordingly concluded the deed of trust was not extinguished by application of NRS 106.240 and there remained no genuine dispute of fact such that US Bank was entitled to summary judgment in its favor. This appeal followed.

Summary Judgment

BDJ argues that the district court erred by granting summary judgment in favor of US Bank. 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.

First, BDJ contends that there remains a genuine dispute of fact as to whether the deed of trust was extinguished by NRS 106.240. BDJ contends that, under the terms of the deed of trust, the 2009 notice of default provided for acceleration of the debt 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 supreme court has recognized that NRS 106.240 "plainly states that a debt becomes 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*, 139 Nev., Adv. Op. 25, 534 P.3d at 699. The supreme 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, the district court recognized that the 2009 notice of default did not provide a clear and unequivocal announcement of a lender's intent to declare the debt wholly due as the notice informed the borrowers of an opportunity to cure the default. *See id.* Moreover, the terms of the deed of trust established that the debt became wholly due on July 1, 2035. Thus, because the terms of the deed of trust did not render the debt wholly due upon the original homeowners' default and the 2009 notice of default similarly did not provide a clear and unequivocal announcement that the lender declared the debt wholly due, NRS 106.240's ten-year period was not triggered by the 2009 notice of default. *See id.* Accordingly, there was no genuine dispute as to whether 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 2009. To the extent that BDJ urges this court to overrule *LV Debt Collect*, this court must apply supreme court precedent. *See Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 n.7 (Ct. App. 2023) ("[T]his court cannot overrule Nevada Supreme Court precedent."). Accordingly, BDJ is not entitled to relief based on this argument.

Second, BDJ contends that the doctrine of judicial estoppel should have barred US Bank from asserting that the deed of trust was not extinguished by NRS 106.240. BDJ contends that a different, non-party bank has previously argued in unrelated court cases that an acceleration of a debt causes that debt to become wholly due for purposes of NRS 106.240.

Judicial estoppel applies if, among other things, the same party takes two different positions in judicial or quasi-judicial administrative proceedings. *Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007). Because BDJ contended that a non-party bank made the aforementioned arguments, and not US Bank, there remains no genuine

dispute as to whether the same party took two different positions during the judicial proceedings. Accordingly, BDJ is not entitled to relief based on this argument.

Reconsideration

Next, BDJ argues that the successor district court judge abused her discretion by granting US Bank's motion for reconsideration. BDJ argues that US Bank engaged in "judge shopping" in violation of the district court rules by seeking reconsideration of the order denying its motion for summary judgment after this matter had been reassigned to a different district court judge.

We review a district court's decision to grant a motion for reconsideration for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). A successor judge may revisit an issue previously decided by a different judge when "there has been an intervening change in controlling law." *Litchfield v. Tucson Ridge Homeowners Ass'n*, 140 Nev., Adv. Op. 57, 555 P.3d 267, 270-71 (2024) (internal quotation marks omitted); *see also Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga, & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.").

DCR 19, which provides that a motion denied by one district court judge should not be presented to another judge "except upon the consent in writing of the judge to whom" the motion was first presented. *See also* EDCR 7.10(b) ("When any district judge has made any ruling, order or decision therein, no other judge may do any act or thing in or about such cause, proceeding or motion, unless upon the request of the judge who has

begun the trial or hearing of such cause, proceeding or motion."). DCR 19 "is intended to prevent 'judge shopping' once a motion is granted or denied." *Moore v. City of Las Vegas*, 92 Nev. 402, 404, 551 P.2d 244, 246 (1976) (interpreting former DCR 27, now DCR 19). However, that rule "is not offended where, as here, the case becomes assigned to another judge by reason of some fortuitous event . . . and not by reason of any action initiated by or within the control of the parties." *Id.* at 405, 551 P.2d at 246.

Here, BDJ does not argue, and the record does not indicate, that US Bank caused this matter to be transferred from the initial district court judge to the successor district court judge, and thus, BDJ fails to demonstrate that DCR 19 was violated. *See id.* Moreover, the supreme court issued an intervening decision in *LV Debt Collect* that directly addressed BDJ's underlying claim and established that the initial decision to deny US Bank's motion for summary judgment was clearly erroneous. As there was an intervening decision that demonstrated the initial denial of US Bank's motion for summary judgment was clearly erroneous, we conclude that the successor district court judge did not abuse her discretion by granting the motion for reconsideration. *See AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197.

Considering the foregoing, we conclude that BDJ is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.

_____, J.

Gibbons

Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Black & Wadhams
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk