IN THE COURT OF APPEALS OF THE STATE OF NEVADA

2167 MAPLE HEIGHTS TRUST, A NEVADA TRUST,
Appellant,
vs.
SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-13CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-13CB, A DELAWARE LIMITED LIABILITY COMPANY,
Respondents.

No. 87955-COA

FILED

JUN 04 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

2167 Maple Heights Trust (the Trust) appeals from a district court order granting a motion to dismiss in an action to quiet title. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.[1]

The Trust sued respondent Bank of New York Mellon (BNYM) for quiet title, declaratory judgment, wrongful foreclosure, and violation of NRS 107.200 et seq. The Trust alleged that it was the owner of the relevant

[1]We note that Sables, LLC was not served with process and did not make an appearance in the district court below. Therefore, it did not become a party to the underlying case and is not a proper party to this appeal. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who is not served with process and does not make an appearance in the district court is not a party to that action). Thus, we direct the clerk of the court to amend the caption on this court's docket to remove Sables, LLC.

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property and that a deed of trust encumbered the property. The Trust 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 the Trust, BNYM's interest in the subject property was extinguished under NRS 106.240, which was apparently triggered by an alleged notice of intent to accelerate the underlying debt letter sent in March 2010, or by the original borrowers' bankruptcy filing on July 30, 2010, and thus the Trust contended BNYM wrongfully foreclosed on the property. Furthermore, the complaint alleged that BNYM willfully failed to timely respond to a request for required loan information pursuant to NRS 107.200 et seq.

Subsequently, BNYM filed a motion to dismiss the complaint. It argued that the Trust's claims for quiet title and declaratory judgment were barred by claim preclusion, as these claims could have been raised in a prior 2017 quiet title action. Additionally, BNYM argued that the Trust's NRS 106.240 claim failed as a matter of law as only a deed of trust or recorded extension would trigger the statute, and the debt had not become wholly due by the original borrowers' default, or a letter sent to them concerning their default. BNYM also contended that the debt secured by the deed of trust did not automatically become wholly due upon the borrowers' filing of a bankruptcy petition. For those reasons, BNYM asserted that NRS 106.240 did not afford the Trust relief. BNYM also asserted that, even if the NRS 106.240 clock had been triggered, it would have been tolled by the prior quiet title litigation. BNYM also contended

that the Trust failed to state a claim for relief as to its NRS 107.200 et seq. claim because the Trust could not demonstrate that a purported violation of NRS 107.200 was willful as the requested statements were provided on June 24, 2022, and were backdated to May 23, 2022, which was within 21 days of receipt of the Trust's request for information.

The Trust opposed the motion, arguing that it had provided sufficient allegations to state a claim as to each of its causes of action. The Trust argued that claim preclusion did not apply because the quiet title and declaratory judgment claims in this action were different from the prior 2017 action. The Trust asserted that BNYM failed to provide the statutorily mandated information within 21 days pursuant to NRS 107.200 et seq. and BNYM's interest in the subject property was extinguished under NRS 106.240. The Trust further asserted that equitable tolling did not apply as nothing prevented BNYM from foreclosing within the ten-year period that began in or about 2010. The Trust alternatively requested NRCP 56(d) relief to conduct discovery. BNYM subsequently filed a reply in support of its motion to dismiss.

The district court granted the motion to dismiss all the claims and dismissed the Trust's amended complaint with prejudice. The court found that the plain language of NRS 106.240 precluded events, such as the ones alleged in the Trust's amended complaint, from triggering the ten-year period under NRS 106.240. The court noted that the default date referenced in the 2022 notice of default did not trigger NRS 106.240's ten-year clock because it did not contain clear and unequivocal language leaving no doubt as to the lender's intent to accelerate, and the borrowers retained the right to reinstate the loan under the deed of trust. The court also found that acceleration did not render the obligation under the loan wholly due. The

court further rejected the argument that the borrowers' bankruptcy triggered NRS 106.240, finding that the bankruptcy did not render the loan wholly due under NRS 106.240. The court additionally found that claim preclusion barred the Trust's NRS 106.240 claims because they could have been raised in the prior quiet title action. Alternatively, to the extent NRS 106.240 was triggered as alleged by the Trust, the court found that the prior quiet title action tolled the NRS 106.240 ten-year clock.

The district court then found that the Trust failed to properly allege a claim under NRS 107.200 et seq. because it failed to allege facts to support its claim that BNYM "failed to provide loan information, much less that [BNYM] willfully failed to provide loan information." The court also found that BNYM "complied with NRS 107.200 et seq. by providing the payoff information within 21 days of receipt of the Trust's request" and that the Trust could not prove damages as to this claim. The court further dismissed the Trust's wrongful foreclosure claim as the Trust did not offer to tender the amounts due and owing on the loan. Furthermore, the court denied NRCP 56(d) relief as it was not available in response to a motion to dismiss and expunged the lis pendens, finding that the Trust could not meet the requirements to maintain its lis pendens in light of the dismissal of all claims. Thereafter, the Trust filed a motion to alter/amend the district court's order, which the district court denied. This appeal followed.

On appeal, the Trust 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, the Trust 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, the Trust 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.

NRS 106.240, Nevada's ancient-lien 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 Assn*, 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.

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." *Id.* 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 that 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, because the terms of the deed of trust did not render the debt wholly due upon the original homeowners' default and allowed the opportunity for the homeowners to cure, NRS 106.240's ten-year period was not triggered by either the default or any purported lender's letter concerning the default. To the extent the Trust relies on the acceleration clause contained in the deed of trust and asserts that this clause made the

debt wholly due, we are not persuaded by this argument because the borrowers retained the option under the deed of trust to reinstate the loan to good standing. *See Norman, LLC v. Newrez LLC*, No. 87545, 2024 WL 5086198, at *1 (Nev. Dec. 11, 2024) (Order of Affirmance) (stating that merely defaulting on a loan is insufficient to trigger NRS 106.240); *Big Rock Assets Mgmt., LLC v. Newrez LLC*, No. 86675, 2024 WL 4865435, at *2 (Nev. Nov. 21, 2024) (Order of Affirmance) (explaining 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"); *RH Kids, LLC v. Specialized Loan Servicing, LLC*, No. 87701-COA, 2025 WL 365736, at *3 (Nev. Ct. App. Jan. 31, 2025) (Order of Affirmance) (rejecting appellant's argument that the debt secured by the deed of trust became wholly due more than ten years ago because the terms of the deed of trust permitted acceleration of the loan and a notice was sent indicating acceleration of the loan). Thus, we conclude that, under the language of the deed of trust, neither the default nor the letter could have accelerated the due date on the loan, and thus the ten-year period under NRS 106.240 was not triggered. Therefore, the Trust fails to demonstrate that it was entitled to relief based on this argument.

The Trust alternatively contends that, under the terms of the deed of trust, the former homeowners' 2010 filing of a bankruptcy petition accelerated the loan secured by the deed of trust, which caused the loan to become wholly due for purposes of triggering NRS 106.240. Specifically, the Trust asserts that the filing of the bankruptcy petition accelerated the loan to trigger NRS 106.240. However, this argument has been previously rejected by the supreme court. *See 8933 Square Knot Tr. v. Bank of New York Mellon as Tr. for Certificate Holders of CWALT, Inc., & Alternative*

Loan Tr. 2005-41 Mortg. Pass-Through Certificates, Series 2005-41, No. 87301, 2024 WL 4523905, at *1 (Nev. Oct. 17, 2024) (Order Affirming in Part, Reversing in Part, and Remanding) ("[W]e are not persuaded that filing a bankruptcy petition rendered the former homeowner's loan "wholly due" for purposes of NRS 106.240."). And notably, the Trust fails 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. Considering the foregoing, the Trust 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 therefore conclude the Trust is not entitled to relief based on this argument. Accordingly, we affirm the district court's dismissal of the Trust's wrongful foreclosure, quiet title, and declaratory relief claims.

Next, the Trust contends the district court erred by dismissing its NRS 107.200 et seq. claim. 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." NRS 107.300 imposes liability when a lender "willfully fails" to provide certain payoff information as provided in NRS 107.200.

The district court dismissed this claim on the ground that the Trust "fail[ed] to allege facts to support its claim [BNYM] failed to provide loan information, much less that [BNYM] willfully failed to provide loan information." On appeal, BNYM suggests that the Trust's amended complaint failed to adequately plead that claim. We disagree.

Here, the Trust's amended complaint set forth that the Trust, as the owner of the subject property, made a written request for the statutorily mandated information and statements on or about April 27, 2022, and sent the same to BNYM via United States Postal Service certified service. The complaint further asserted that BNYM did not provide the statutorily enumerated information and statements within the mandated 21-day period from receipt of that request and that BNYM's "refusal/failure was willful since there was no just cause for said refusal/failure." Given the language set forth in the Trust's amended complaint, we conclude that BNYM was sufficiently apprised regarding the contours of the Trust's NRS 107.200-.300 claim such that the dismissal of this claim for failure to allege sufficient facts was in error. *See 8933 Square Knot Tr.*, 2024 WL 4523905, at *2 (determining that the operative complaint sufficiently apprised BNYM regarding the contours of appellant's NRS 107.300 claim, such that its claim satisfied NRCP 12(b)(5)'s motion-to-dismiss standard); *Harris v. State*, 138 Nev. 390, 407, 510 P.3d 802, 807 (2022) ("Under our notice-pleading standard, we liberally construe the pleadings for sufficient facts that put the defending party on adequate notice of the nature of the claim and relief sought." (internal quotation marks and alteration omitted)); NRCP 8(e) ("Pleadings must be construed so as to do justice.").

While the district court also found that dismissal of this claim was warranted because BNYM "complied with NRS 107.200 et seq. by

providing the payoff information within 21 days of receipt of the Trust's request," we conclude the court erred in that determination. The record reflects[2] that, while BNYM provided the Trust with statements that were backdated to within 21 days of BNYM's receipt of the request, the actual response to the Trust's request was provided after the 21 days expired. Because the plain language of the statute requires that the response be provided within 21 days of the request being made, BNYM's response did not comply with the statute's requirements. *See* NRS 107.200 (setting forth that the beneficiary of a deed of trust must respond to a request for a statement within 21 days after receiving the request and provide certain information to the requestor regarding the secured debt); *see also Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020) (noting that this court generally interprets statutes based on their plain language).

Finally, to the extent the district court found that the Trust could not prove damages as to this claim, we note that NRS 107.300 does not entitle the Trust to any relief from what appears to be the now-completed foreclosure sale. *See* NRS 107.300(1) (entitling a successful plaintiff to "$300 and any actual damages suffered"). The Trust does not expressly address the district court's finding as to this point on appeal, and thus, to the extent it sought "actual damages suffered" below, the Trust has waived any challenge to the court's determination it could not prove any

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[2]As the district court recognized, under *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015), a district court may consider evidence that is not attached to the complaint under certain circumstances when the complaint necessarily relies on those materials. Thus, the district court could properly consider the request for information and BNYM's response, which were attached as exhibits to BNYM's motion to dismiss.

such damages. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Nonetheless, because the Trust asserts it sufficiently pled the claim as required by NRCP 8, and a successful plaintiff on this claim would, by statute, be entitled to $300, we conclude reversal and remand of the NRS 107.200 et seq. claim is warranted to the extent the Trust claims it is entitled to $300 under NRS 107.300.

Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[3]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Charles K. Hauser, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Melanie D. Morgan
Eighth District Court Clerk

[3]Because the Trust presents no arguments regarding the district court's rejection of its argument that the original note was not produced, the decision to expunge the lis pendens, and the denial of its motion to alter or amend, it has waived any challenges to the same. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.