

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

7321 WANDERING STREET TRUST, A  
NEVADA TRUST,  
Appellant,  
vs.  
U.S. BANK NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY,  
BUT SOLELY AS TRUSTEE FOR THE  
NRZ PASS-THROUGH TRUST VIII, A  
NATIONAL BANKING ASSOCIATION,  
Respondent.

No. 88943-COA

**FILED**

**DEC - 9 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

7321 Wandering Street Trust (Trust) appeals from a district court order granting a motion to dismiss in an action concerning real property. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

In the operative complaint, Trust sued respondent U.S. Bank National Association for, among other things, willful violation of NRS 107.200 et seq. Trust alleged that it was the owner of the relevant property and that a deed of trust encumbered the property. In addition, Trust alleged that U.S. Bank violated NRS 107.200 et seq. because it failed to timely respond to Trust's request for information regarding the debt secured by the deed of trust and, when U.S. Bank submitted its untimely response, it included an impermissible and unlawful amount of accrued interest together with the underlying portion of the outstanding loan amount.

U.S. Bank later filed a motion seeking dismissal of the operative complaint, asserting the facts as alleged were insufficient to state a claim for which relief could be granted. U.S. Bank also requested, in the

alternative, that the district court grant summary judgment in its favor as the undisputed facts demonstrated it was entitled to relief. U.S. Bank contended, among other things, that Trust failed to allege facts sufficient to meet the elements of its NRS 107.200 et seq. claim. Trust opposed the motion, arguing that it had provided sufficient allegations to state a claim. Trust also contended that, should the district court elect to treat the motion as one for summary judgment, the court should permit it additional time to conduct discovery pursuant to NRCP 56(d) concerning its allegation that U.S. Bank did not provide it with the proper information required by NRS 107.200 et. seq.

Following a hearing, the district court entered a written order granting U.S. Bank's request to dismiss the operative complaint. In so doing, the district court determined that Trust did not state a claim for violation of NRS 107.200 et seq. because it did not sufficiently allege that U.S. Bank willfully failed to provide information concerning the debt secured by the deed of trust. In addition, the court determined that U.S. Bank substantially complied with the requirements of NRS 107.200 et seq. The court also determined that Trust was not entitled to relief as to any of its remaining claims. This appeal followed.

On appeal, Trust challenges the district court's order dismissing its NRS 107.200 et seq. claim.<sup>1</sup> We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all the plaintiff's factual allegations as true and drawing every reasonable

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<sup>1</sup>Because Trust does not challenge the dismissal of its remaining claims, it has forfeited any challenge thereto as a result. 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 [forfeited].").

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). "[W]e liberally construe pleadings to place matters into issue which are fairly noticed to the adverse party." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (internal quotation marks omitted).

Trust contends the district court erred by dismissing its NRS 107.200 et seq. claim because its allegations were sufficient to state a claim for relief. Trust notes that it alleged that U.S. Bank willfully failed to respond to its request within the required timeframe and that U.S. Bank's late response did not comply with the relevant statutes as it contained an impermissible and unlawful payoff amount. Moreover, Trust contends that the district court improperly dismissed this claim on the ground that U.S. Bank substantially complied with NRS 107.200 et. seq. despite U.S. Bank's failure to comply with the statutorily mandated 21-day timeframe to

respond to its request. U.S. Bank counters that Trust's operative complaint failed to adequately plead its NRS 107.200 et seq. claim.<sup>2</sup>

Taken together, NRS 107.200 and NRS 107.210 provide 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" and "the amount necessary to discharge the debt secured by the deed of trust." Moreover, the beneficiary of the deed of trust must provide when a debt is in default, among other things not relevant to this appeal, "the amount in default, the principal amount of the obligation or debt secured by the deed of trust, [and] the interest accrued and unpaid on the obligation or debt secured by the deed of trust." NRS 107.210(4). NRS 107.300 imposes liability when a lender "willfully fails" to provide certain payoff information as provided in NRS 107.200 and NRS 107.210. When a plaintiff successfully establishes that the beneficiary violated NRS 107.200 or NRS 107.210, the beneficiary is liable to the plaintiff "in an amount of \$300 and any actual damages suffered by the person who requested the statement." NRS 107.300(1).

Here, Trust's amended complaint set forth that it, as the owner of the subject property, made a written request for the statutorily mandated information and statements and that U.S. Bank received the written request on or about June 20, 2023. Trust further alleged that U.S. Bank

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<sup>2</sup>We note U.S. Bank does not argue that it would have been entitled to relief under a summary judgment standard, and thus, it has forfeited any argument related to the same. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

did not provide the statutorily enumerated information and statements within the mandated 21-day period from receipt of that request, *see* NRS 107.200; NRS 107.210, but instead responded on August 28, 2023. Trust also alleged that U.S. Bank's untimely response further violated the statutory requirements as it included an impermissible and unlawful amount of accrued interest. Trust therefore alleged that U.S. Bank refused or failed to comply with NRS 107.200 et. seq. and that its failure was willful and done without cause.

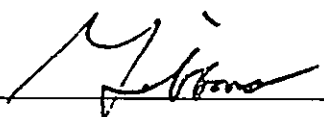
Given the language set forth in Trust's amended complaint, we conclude that U.S. Bank was sufficiently apprised regarding the contours of Trust's NRS 107.200 et seq. claim such that the dismissal of this claim for failure to allege sufficient facts was in error. *See 8933 Square Knot Tr. v. Bank of N.Y. Mellon.*, No. 87301, 2024 WL 4523905, at \*2 (Nev. Oct. 17, 2024) (Order Affirming in Part, Reversing in Part, and Remanding) (determining that the operative complaint sufficiently apprised the defendant 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. 403, 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.").

In addition, to the extent the district court determined, as a matter of law, that U.S. Bank was only required to substantially comply with the mandated 21-day deadline to provide the required information and that, as a matter of fact, it did so by responding on August 28, 2023, the court's fact-based determination was erroneous at this stage of the

proceedings. Trust made sufficient factual allegations as to willful noncompliance, including those beyond the timeliness of the response, such that the court could not properly make any such determination on a motion to dismiss. Cf. *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672 (recognizing that a court must accept as true the factual allegations in a complaint when deciding an NRCP 12(b)(5) motion).<sup>3</sup> Thus, we conclude reversal of the dismissal of Trust's NRS 107.200 et seq. claim and remand for further proceedings is warranted. We note, however, that NRS 107.300 does not entitle Trust to any relief from what appears to be U.S. Bank's now-completed foreclosure sale. See NRS 107.300(1) (entitling a successful plaintiff to "\$300 and any actual damages suffered"). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Timothy C. Williams, District Judge  
Akerman LLP/Las Vegas  
Hong & Hong  
Eighth District Court Clerk

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<sup>3</sup>In light of this determination, we need not further address at this time the parties' arguments as to whether the statute requires strict or substantial compliance.