IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
Appellant,
vs.
SELECT PORTFOLIO SERVICING, LLC,
Respondent.

No. 88882-COA

ORDER OF AFFIRMANCE

RH Kids appeals from a district court final order in an action to quiet title. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In the operative complaint, RH Kids sued the predecessor in interest to respondent Select Portfolio Servicing, LLC, for quiet title, wrongful foreclosure, violation of NRS 107.200 et seq., and declaratory and injunctive relief. RH Kids alleged that it was the owner of the relevant property and that a deed of trust encumbered the property. RH Kids further alleged, among other things, 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 Kids, respondent's interest in the subject property, as the beneficiary of the deed of trust at the time, was extinguished under NRS 106.240, which was triggered by an acceleration of

the underlying debt in either 2009 or 2010. RH Kids also contended that the original borrowers' bankruptcy proceedings accelerated the debt.

Respondent answered and later filed a motion for summary judgment. Respondent contended, among other things, 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 either 2009 or 2010. Respondent also argued the debt had not become wholly due by the original borrowers' default in 2009, by a letter sent concerning the default, or by a 2010 recorded notice of default. In addition, respondent filed documents and affidavits in support of the motion.

RH Kids opposed the motion, arguing there remained genuine disputes of material fact. In particular, RH Kids asserted respondent's interest in the subject property was extinguished under NRS 106.240. RH Kids alternatively requested NRCP 56(d) relief to conduct discovery. Respondent subsequently filed a reply in support of its motion and contended RH Kids' request for NRCP 56(d) relief was unwarranted.

The district court issued a written order in which it concluded that there was no genuine dispute of material fact and respondent was entitled to summary judgment as a matter of law. The court ruled the plain language of NRS 106.240 precluded events, such as the ones alleged in RH Kids' complaint, from triggering the ten-year period under NRS 106.240. The court also determined that RH Kids was not entitled to relief as to any of its remaining claims. The court accordingly granted respondent's motion for summary judgment. The district court also expunged a lis pendens recorded against the relevant property and denied RH Kids' request for a restraining order or injunctive relief related to a foreclosure sale of the property.

RH Kids later filed a motion to alter or amend the district court's order, noting the district court failed to specifically explain why the court rejected RH Kids' request for NRCP 56(d) relief and reiterating its contention that there remained disputed facts as to its NRS 106.240 claim. Respondent opposed the motion. The district court later entered an order denying the motion to alter or amend, concluding there was no basis to alter or amend the order granting summary judgment. In particular, the district court explained that RH Kids did not demonstrate it was entitled to conduct additional discovery pursuant to NRCP 56(d) as it failed to identify what facts it hoped to obtain through discovery that would justify its opposition. This appeal followed.

RH Kids challenges the district court's decision to grant summary judgment in favor of respondent. 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.

RH Kids contends the district court erred by granting summary judgment in respondent's favor concerning its NRS 106.240 claim because it contends that the terms of the deed of trust permitted acceleration of the loan, the lender sent the original borrowers a notice indicating the acceleration of the loan secured by the deed of trust more than ten years

ago and, because the loan was accelerated, the deed of trust that secured that debt became extinguished pursuant to NRS 106.240.[1]

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 N.Y. Mellon*, 139 Nev. 232, 236, 534 P.3d 693, 697 (2023); *Posner v. U.S. Bank Nat'l Ass'n*, 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. at 238, 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.* at 238-39, 534 P.3d at 699.

Here, because the terms of the deed of trust did not render the debt wholly due upon the original borrowers' default and allowed the

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[1]Because RH Kids does not challenge the grant of summary judgment in favor of respondent as to 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).

opportunity for the borrowers to cure the default, NRS 106.240's ten-year period was not triggered by either the default or any purported lender's letter concerning the default. RH Kids likewise did not demonstrate that the recorded notice of default rendered the debt secured by the deed of trust wholly due such that NRS 106.240 was triggered by that document. *See id.*

To the extent RH Kids 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). Accordingly, we conclude that, under the language of the deed of trust, neither the default, the letter, nor the recorded notice of default could have accelerated the due date on the loan, and thus the ten-year period under NRS 106.240 was not triggered. Therefore, RH Kids fails to demonstrate that it is entitled to relief based on this argument.

Second, RH Kids contends the district court abused its discretion by refusing to grant it additional time for discovery to oppose respondent's motion for summary judgment. We review the denial of a request for a continuance to conduct discovery pursuant to NRCP 56(d) for an abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted). NRCP 56(d) provides that a district court may allow additional time to conduct discovery if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011). In addition, such a request is only appropriate when the nonmovant expresses how further discovery will create a genuine dispute of material fact. *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62.

Here, the district court determined RH Kids failed to specifically explain why it could not present sufficient facts to justify its opposition or how the additional information it hoped to obtain through discovery would create a genuine dispute of material fact. On appeal, RH Kids also does not explain what information it could have gained via discovery to create a genuine dispute of material fact. Under these circumstances, RH Kids fails to demonstrate that any failure to permit it additional time to conduct discovery was arbitrary or capricious or exceeded the bounds of law or reason, and thus it fails to demonstrate the district court abused its discretion by denying RH Kids' request for NRCP 56(d) relief. *See id.* at 117-18, 110 P.3d at 62.

Thus, based on the foregoing analysis, we conclude RH Kids' contention that the district court erred by granting summary judgment in favor of respondent is without merit.[2] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

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[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we conclude that they either do not present a basis for relief or need not be addressed.

In addition, respondent has requested that this court sanction RH Kids pursuant to NRAP 38 on the ground that this appeal is frivolous. We note that counsel for RH Kids has raised substantially similar arguments on appeal in other matters, those arguments have been soundly rejected by the appellate courts, and this court has recently issued orders cautioning counsel for RH Kids that this court may impose sanctions under NRAP 38 when it "determines that an appeal is frivolous or was brought or maintained without reasonable ground or solely for purposes of delay, or whenever the appellate processes of the court have otherwise been misused." *TWT Invs., LLC v. Nationstar Mortg., LLC*, No. 88984-COA, 2025 WL 2741615, at *3 n.3 (Nev. Ct. App. Sept. 25, 2025) (Order of Affirmance) (internal quotation marks omitted); *see also Norman, LLC v. Affinia Default Servs., LLC*, No. 88524-COA, 2025 WL 3248511, at *3 n.3 (Nev. Ct. App. Nov. 20, 2025) (Order of Affirmance). Because briefing in this appeal was completed prior to the warning given in our prior orders, we decline to issue a sanction at this time. But we again warn counsel for RH Kids that this court may impose sanctions under NRAP 38 should counsel pursue a frivolous appeal or misuse the appellate process of the court.

cc: Hon. Susan Johnson, District Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
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Eighth District Court Clerk