

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VILL GUDEN AND BRITE  
GUDENAVICHENE,  
Appellants,  
vs.  
BARRETT DAFFIN FRAPPIER  
TREDER & WEISS, LLP; AND U.S.  
BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR HARBORVIEW  
MORTGAGE LOAN TRUST 2005-2,  
MORTGAGE LOAN PASS-THROUGH  
CERTIFICATES, SERIES 2005-2,  
Respondents.

No. 88831-COA

**FILED**

**FEB 19 2026**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Vill Guden and Brite Gudenavichene appeal from a district court order dismissing the amended complaint and denying a motion for a preliminary injunction in a real property action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Appellants sued respondents Barret Daffin Frappier Treder & Weiss LLP and U.S. Bank National Association, which are respectively the trustee and beneficiary of the deed of trust encumbering Guden's property. Appellants alleged that various notices of default, which were recorded against the property, accelerated the debt secured by the deed of trust such that after ten years elapsed, the deed of trust was extinguished pursuant to Nevada's ancient-lien statute, NRS 106.240 (providing that a lien on real property is conclusively presumed to be discharged "[ten] 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"). Based on

that ancient-lien theory, appellants asserted a claim for “negligence per se by violation of NRS 106.240” and sought a temporary restraining order (TRO), preliminary injunction, and declaratory relief. And after they separately moved for a TRO and preliminary injunction, the district court issued a TRO, prohibiting respondents from foreclosing on the property, and scheduled a hearing on appellants’ motion for a preliminary injunction.

U.S. Bank opposed appellants’ motion for a preliminary injunction and countermoved to dismiss their complaint, arguing that their ancient-lien theory did not establish a viable claim for relief. In particular, U.S. Bank argued, among other things, that the supreme court had recently rejected a substantively identical argument in *LV Debt Collect, LLC v. Bank of New York Mellon*, 139 Nev. 232, 235-39, 534 P.3d 693, 697-699 (2023). There, the supreme court held that for purposes of NRS 106.240, “a debt become[s] wholly due only according to either of two things: (1) the terms [of the deed of trust] or (2) any recorded written extension thereof.” *Id.* at 236, 534 P.3d at 697 (first alteration in original) (internal quotation marks omitted). The supreme court further determined that “a deed of trust can only be presumed satisfied under NRS 106.240 when ten years 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, rather than a document like a [n]otice of [d]efault.” *Id.* at 238, 534 P.3d at 699.

Appellants then filed an amended complaint that reiterated their ancient-lien theory but also alleged an alternate theory. In particular, citing to *Posner v. U.S. Bank National Ass’n*, 140 Nev., Adv. Op. 22, 545 P.3d 1150 (2024), which applied *LV Debt Collect* to conclude that the institution of a judicial foreclosure action does not trigger NRS 106.240,

appellants essentially alleged that, because the debt secured by the deed of trust could not become wholly due until the deed of trust's maturity date—March 1, 2035<sup>1</sup>—since there had been no written extension thereof, the debt could not be accelerated, and a foreclosure sale could not proceed, until that time.

Appellants also filed a reply in support of their motion for preliminary injunction and opposition to U.S. Bank's countermotion to dismiss, arguing that they stated a viable claim based on their alternate theory in light of the supreme court's holdings in *LV Debt Collect* and *Posner*. Moreover, appellants argued there was a defect in the deed of trust's chain-of-title since although assignments had been recorded in July 2010 from Mortgage Electronic Registration Systems, Inc. (MERS)—the original beneficiary—to U.S. Bank and in March 2016 from Nationstar Mortgage, LLC to U.S. Bank, there was no intervening assignment to show how Nationstar acquired an interest in the deed of trust to assign to U.S. Bank. U.S. Bank, in turn, filed a sur-reply to appellants' motion for a preliminary injunction, arguing that *LV Debt Collect* and *Posner* do not stand for the proposition that acceleration and foreclosure cannot occur until the deed of trust's maturity date, but instead, interpreted the phrase "wholly due" for purposes of NRS 106.240.

Following a hearing, the district court entered an order denying appellants' motion for a preliminary injunction, dismissing their amended complaint, dissolving the TRO entered in their favor, and expunging a lis

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<sup>1</sup>We acknowledge that the amended complaint identifies March 1, 2025, as the maturity date of the deed of trust, but this appears to be a typographical error, as the maturity date set forth in the deed of trust is March 1, 2035.

pendens they had recorded against the property. For support, the district court applied *LV Debt Collect* to conclude that NRS 106.240's ten-year period was not triggered by the notices of default identified in appellants' amended complaint. Further, the district court determined that *LV Debt Collect* and *Posner* simply interpreted the phrase "wholly due" for purposes of NRS 106.240; and, therefore, did not support appellants' alternate theory that a deed of trust must reach its maturity date before the underlying debt may be accelerated and the encumbered property foreclosed upon. This appeal followed.

On appeal, appellants challenge the dismissal of their amended complaint. This court reviews an order granting a motion to dismiss for failure to state a claim upon which relief can be granted under NRCPC 12(b)(5) de novo. *Brown v. Eddie World, Inc.*, 131 Nev. 150, 152, 348 P.3d 1002, 1003 (2015). We rigorously review a district court order granting an NRCPC 12(b)(5) motion to dismiss, accepting all 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.

In challenging the dismissal of their amended complaint, appellants argue that they stated a viable claim for relief based on the alternate theory discussed above. However, as U.S. Bank has argued throughout these proceedings, and the district court found, *LV Debt Collect* and *Posner* simply construed the term 'wholly due' for purposes of

evaluating whether NRS 106.240's ten-year period was triggered by the notices of default and judicial foreclosure at issue in those cases. 139 Nev. at 232, 534 P.3d at 695 ("At issue in [*LV Debt Collect*] is whether a loan secured by real property becomes "wholly due" for purposes of NRS 106.240 when a [n]otice of [d]efault is recorded as to the secured loan."); 140 Nev., Adv. Op. 22, 545 P.3d at 1153 (considering whether initiation of a judicial foreclosure proceeding caused a secured debt to become wholly due for purposes of NRS 106.240). And nothing in either decision suggests that acceleration and foreclosure cannot occur before a deed of trust's maturity date. *LV Debt Collect*, 139 Nev. at 235-39, 534 P.3d at 697-99; *Posner*, 140 Nev., Adv. Op. 22, 545 P.3d at 1153. Consequently, appellants' argument on this point fails to establish a basis for relief.

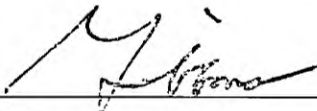
Next, appellants reiterate that there is a defect in the chain-of-title for the deed of trust, arguing that because assignments were recorded in July 2010 and March 2016 showing that the beneficial interest was transferred from MERS to U.S. Bank and then from Nationstar to U.S. Bank, there is a "mystery" as to how Nationstar acquired an interest in the deed of trust to assign to U.S. Bank. However, the purported mystery is resolved by the documents that appellants themselves attached to their motion for a TRO and preliminary injunction, which include the assignments recorded in July 2010 and March 2016, as well as an intervening assignment recorded in June 2014 that transferred the beneficial interest from U.S. Bank to Nationstar. See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (explaining that Nevada's appellate courts "may take into account matters of public record . . . when ruling on a motion to dismiss for failure to state a claim

upon which relief can be granted”). As a result, appellants’ argument in this respect is without merit. *See Brown*, 131 Nev. at 152, 348 P.3d at 1003.

Thus, for the foregoing reasons, appellants have not demonstrated that the district court erred by dismissing their amended complaint.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

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<sup>2</sup>To the extent appellants direct their appeal at the denial of their motion for a preliminary injunction, relief is unwarranted because they have no likelihood of success on the merits of their claims for the reasons stated above. *See Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (“Because the district court has discretion in determining whether to grant a preliminary injunction, [Nevada’s appellate courts] will only reverse the district court’s decision when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact.” (internal quotation marks omitted)); *see also Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (explaining that a plaintiff must establish a likelihood of success on the merits to prevail on a request for a preliminary injunction).

<sup>3</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be addressed.

cc: Hon. Joseph Hardy, Jr., District Judge  
Ara H. Shirinian, Settlement Judge  
Benjamin B. Childs  
Troutman Pepper Hamilton Sanders LLP/Las Vegas  
Eighth District Court Clerk