IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMANATHAN FAMILY TRUST, A NEVADA TRUST,
Appellant,
vs.
THE BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2005-4, A DELAWARE CORPORATION,
Respondent.

No. 88269-COA

FILED
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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

The Ramanathan Family Trust appeals from a district court amended order granting summary judgment in a real property matter. Eighth Judicial District Court, Clark County; Jacob A. Reynolds, Judge.

The trust owns certain real property encumbered by a deed of trust, which named Anvil Funding Corporation as the beneficiary and was recorded in March 2005. In 2019, a servicer for respondent Bank of New York Mellon (BONY) recorded a lost-assignment affidavit, averring that Anvil assigned the deed of trust to BONY and that the assignment could not be located for recording. A few years later, BONY initiated nonjudicial foreclosure proceedings against the subject property, which prompted the trust to commence the underlying proceeding against BONY.

While the trust asserted various claims against BONY, alleging that the trust held title to the property free and clear and that BONY was not entitled to foreclose, each of the trust's claims were eventually dismissed

or the subject of a summary judgment in BONY's favor.[1] However, because the trust had alleged that the assignment from Anvil to BONY was never recorded, in March 2023, the district court directed BONY that it would need to record the assignment or obtain a declaratory judgment concerning its authority to enforce the deed of trust before it could proceed with foreclosure. Approximately two weeks later, in April 2023, BONY filed a counterclaim for declaratory relief, alleging that it purchased the deed of trust from Anvil, that the assignment reflecting the transfer had been lost, and that it was entitled to a declaration that it was the beneficiary of the deed of trust and entitled to foreclose on the subject property.

BONY moved for summary judgment on its counterclaim, arguing that the 2019 lost-assignment affidavit demonstrated it was entitled to relief and that the trust had conceded BONY was the beneficiary during a prior federal court action between BONY and the trust, acting through its trustee, Ravi S. Ramanathan, such that it was judicially estopped from arguing the opposite in the present case. *See Ramanathan v. Bank of N.Y. Mellon*, No. 2:19-cv-02009-APG-EJY, 2021 WL 4486320, at *1 n.1 (D. Nev. Sep. 30, 2021) ("Ramanathan concedes that BONY is the

[1]Although the trust indicated an intent to challenge these decisions in its notices of appeal, the trust does not present any argument concerning them in its opening or reply briefs, but instead, represents that its appeal is solely directed at the district court's amended order granting BONY's motion for summary judgment on its counterclaim for declaratory relief. Accordingly, we conclude that the trust has abandoned any challenge to the orders resolving its claims against BONY. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 559 n.1, 216 P.3d 788, 790 n.1 (2009) (reasoning that an appellant abandoned any challenge to an order designated in a notice of appeal by failing to address the order in its opening and reply briefs).

beneficiary.").[2] The trust opposed BONY's motion, asserting that no legal authority permitted BONY to establish its interest in the deed of trust through a lost-assignment affidavit, which the trust contended would circumvent NRS 106.210(1) ("A mortgage of real property which has been assigned may not be enforced unless and until the assignment is recorded . . . ."). At the resulting hearing, the district court directed supplemental briefing concerning whether the assignment occurred and, after the trust inquired whether it could present argument on a statute-of-limitations issue that was not raised in its opposition, the court eventually indicated that the trust could "raise [its] concerns . . . after [it] see[s] [BONY's] supplement."

In its supplemental brief, BONY argued Nevada's lost-note statute—NRS 104.3309—and various extrajurisdictional authorities demonstrated it could use a lost-assignment affidavit to establish it was entitled to enforce the deed of trust. Moreover, BONY asserted that secondary evidence supported that Anvil transferred its interest in the deed of trust to BONY. The trust, on the other hand, reiterated its prior argument in its supplemental brief and further asserted that BONY's counterclaim was barred by the four-year, catchall limitations period set

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[2]In the prior federal court action, the trust sought declaratory relief and to quiet title to the property on grounds that the deed of trust was invalid under Nevada's ancient-lien statute, NRS 106.240, while BONY pursued claims for judicial foreclosure and unjust enrichment. *Ramanathan*, No. 2:19-cv-02009-APG-EJY, 2021 WL 4486320, at *1. The federal court entered summary judgment in favor of BONY on the trust's claims because NRS 106.240 did not apply, and entered summary judgment in favor of the trust on BONY's claims because the judicial foreclosure claim was barred by the statute of limitations and BONY failed to oppose the trust's motion for summary judgment on the unjust enrichment claim. *See id.* at *3-5.

forth in NRS 11.220. In particular, the trust observed that BONY's servicer had prepared a second lost assignment affidavit in November 2015, demonstrating that BONY had knowledge that the assignment from Anvil to BONY was missing by that time at the latest. Thus, the trust maintained that BONY was required to seek declaratory relief by November 2019 under NRS 11.220 and that, since BONY waited until 2023 to do so, its counterclaim was time-barred. Moreover, the trust disputed whether BONY properly obtained an assignment of the deed of trust.

The district court entered an order granting BONY's motion for summary judgment, citing to NRS 104.3309's procedure to enforce a lost note to support its decision. From there, the court found, based on BONY's 2019 lost-assignment affidavit and secondary evidence, that BONY established the following by a preponderance of the evidence: (1) BONY acquired ownership of the deed of trust from Anvil, which had the right to enforce it at the time; (2) the assignment of the deed of trust from Anvil to BONY was not lost as a result of transfer or lawful seizure; and (3) the assignment cannot be reasonably obtained.[3] As a result, the court

[3]Although the district court incorrectly applied the preponderance-of-the-evidence standard rather than evaluating whether genuine disputes of material fact remained to preclude summary judgment, *see* NRCP 56(a) (providing that summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"), we conclude the court's error was harmless for the reasons discussed below, *see Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that an error is prejudicial if it "affects [a] party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Further, the district court's order includes a scrivener's error in that each of the foregoing findings referenced the

concluded BONY was excused from strictly complying with NRS 106.210's recording requirement and it could therefore enforce its beneficial interest in the deed of trust by foreclosing on the subject property. Lastly, following granting a motion to alter or amend, the court found that NRS 11.220's four-year limitations period did not bar BONY's counterclaim because the period did not begin to run until the court directed BONY to bring the counterclaim in March 2023, which BONY did approximately two weeks later. This appeal followed.

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.

On appeal, the trust initially reiterates its position that based on NRS 11.220's four-year limitations period BONY's counterclaim was untimely. The applicability of a statute of limitations is a question of law subject to de novo review where, as here, the relevant facts are uncontested.

"note" secured by the deed of trust, rather than the deed of trust itself or the assignment thereof. However, the record before this court plainly demonstrates that the court was referencing the deed of trust/assignment given the issues in this case, *see Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (providing that courts construe an ambiguous order by consulting the record and proceedings giving rise to the order), and we therefore conclude that any error in this respect was also harmless, *see Wyeth*, 126 Nev. at 465, 244 P.3d at 778; *cf.* NRCP 61.

See Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *see also Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013).

NRS 11.220 establishes a four-year, catchall limitations period applicable to "action[s] for relief, not hereinbefore provided for [in Nevada's statutes of limitation]." The Nevada Supreme Court has determined that claims for declaratory relief "to resolve competing claims to title and clouds on title" are effectively quiet title actions brought under NRS 40.010 and that such claims are governed by NRS 11.220's four-year limitations period. *U.S. Bank, N.A. v. Thunder Props., Inc.*, 138 Nev. 16, 19, 22, 503 P.3d 299, 304, 306 (2022). And in that context, the limitations period does not begin to run against the holder of a nonpossessory lien until the lienholder "has something closely analogous to notice of disturbed possession, such as repudiation of the lien." *Id.* at 23, 503 P.3d at 306 (internal quotation marks omitted).[4]

Although the trust contends that the statute's four-year limitations period began to run in November 2015 when the 2015 lost-assignment affidavit was prepared, it has not directed this court's attention to any evidence in the record to demonstrate that it took affirmative steps towards repudiating BONY's interest in the deed of trust based on the missing assignment at that time. *See id.* To the contrary, the undisputed

[4]While BONY contends that no statute of limitations governed its counterclaim because it was prospective in nature, BONY's contention is unavailing. Indeed, a claim for declaratory relief is only exempt from compliance with the statute of limitations that would otherwise be applicable when it seeks prospective relief from "ongoing violation[s] of [the plaintiff's] constitutional rights." *U.S. Bank, N.A.*, 138 Nev. at 19, 503 P.3d at 304. And here, BONY has never suggested that its counterclaim concerns an ongoing infringement of its constitutional rights.

evidence in the record demonstrates that the trust later participated in the prior federal court action, where it conceded that BONY was the beneficiary, and apparently raised no objections when the federal court concluded that BONY was not precluded from pursuing a nonjudicial foreclosure, *see Ramanathan*, No. 2:19-cv-02009-APG-EJY, 2021 WL 4486320, at *1 n.1, *5 n.5, notwithstanding that both the 2015 and 2019 lost-assignment affidavits were produced in that case.

Moreover, the evidence in the record demonstrates that the trust did not repudiate BONY's interest in the deed of trust based on the missing assignment until September 2022 when it filed its complaint, seeking to quiet title to the subject property based, in part, on the allegation that the assignment from Anvil to BONY had never been recorded. *See U.S. Bank, N.A.*, 138 Nev. at 23, 503 P.3d at 306. Because BONY filed its counterclaim approximately seven months later, we conclude that no genuine dispute of material fact concerning the statute of limitations precluded summary judgment in BONY's favor, albeit for slightly different reasons than those the district court relied upon. *See Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (recognizing that Nevada's appellate courts will affirm the district court's order if it reached the correct result, even if it did so for a different reason).

The trust next challenges the summary judgment in BONY's favor by attempting to demonstrate that BONY failed to establish it was the beneficiary of the deed trust. To do so, the trust disputes whether Nevada law permitted BONY to prove its beneficial interest in the deed of trust using the 2019 lost-assignment affidavit, and the trust further argues a genuine dispute of material fact existed as to whether Anvil assigned the deed of trust to BONY given that the 2019 lost assignment affidavit did not

specify when the assignment occurred. BONY counters that the trust is judicially estopped from contesting BONY's ability to enforce the deed of trust in this manner since, in the prior federal court action, the trust conceded that BONY was the beneficiary.

Although BONY also raised its judicial-estoppel argument during the underlying proceeding, the trust has never contested, either below or on appeal, whether the doctrine applies under the circumstances presented here,[5] and has therefore forfeited that issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been [forfeited] and will not be considered on appeal."); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellate does not raise on appeal are forfeited). But regardless, we conclude that the elements of judicial estoppel are satisfied based on the undisputed evidence in the record, such that the trust is barred from challenging whether BONY was the beneficiary of the deed of trust.

Judicial estoppel applies when the following five elements are satisfied:

> (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the

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[5]Instead, the trust focuses on the ramifications of applying the judicial-estoppel doctrine in the present case asserting that, if the doctrine applies, only its argument concerning the 2005 assignments would be barred. However, to the extent that the trust disputes whether BONY could rely on the 2019 lost-assignment affidavit to prove its beneficial interest in the deed of trust, it is effectively challenging whether BONY was the beneficiary of the deed of trust, notwithstanding its concession in the prior federal court action. Consequently, the trust's assertion is unpersuasive.

> tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

In re Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017). Here, the first, second, and fourth elements are satisfied because the trust took two totally inconsistent positions in judicial proceedings insofar as it conceded in the prior federal court action that BONY was the beneficiary of the deed of trust and proceeded to challenge BONY's status as the beneficiary in the underlying proceeding. Further, the third element is satisfied since the federal court accepted the trust's concession. *See Ramanathan*, No. 2:19-cv-02009-APG-EJY, 2021 WL 4486320, at *1 n.1. And the fifth element is satisfied because the trust's concession in the prior federal court action cannot reasonably be characterized as the result of ignorance, fraud, or mistake, given that both the 2015 and 2019 lost-assignment affidavits were produced in that case, along with the prior assignments, such that the trust was aware of the facts that it now challenges in the present case. Thus, because the trust is judicially estopped from attacking BONY's status as the beneficiary of the deed of trust, its arguments on that point fail to establish a genuine dispute of material fact to preclude summary judgment in BONY's favor.

The trust next challenges the summary judgment in BONY's favor on grounds that the district court improperly excused BONY's strict compliance with NRS 106.210. Whether a statute demands strict compliance or allows for substantial compliance is a question of law, which this court reviews de novo. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482; *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). We look to a statute's language, along with policy and equity considerations, in evaluating whether the statute requires strict or substantial compliance.

BMO Harris Bank, N.A. v. Whittemore, 139 Nev. 274, 277, 535 P.3d 241, 245 (2023). "The inquiry is whether the purpose of the statute can be served by substantial compliance rather than technical compliance with the statute." *Id.* "And we will allow substantial compliance when requiring strict compliance would lead to an absurd result." *Id.*

Here, although NRS 106.210 broadly requires that "any assignment of the beneficial interest under a deed of trust must be recorded" and states "the trustee under the deed of trust may not exercise the power of sale . . . unless and until the assignment is recorded," the statute also explains that recordation "shall operate as constructive notice of the contents thereof to all persons," which reflects the statute's purpose. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 519, 286 P.3d 249, 259 (2012) (stating that NRS 106.210's purpose is to impart constructive notice of deed-of-trust transfers on all persons). Given the policy underlying NRS 106.210, we conclude that requiring strict compliance under the circumstances presented here would be absurd, as the trust had notice and conceded that BONY was the beneficiary of the deed of trust in the prior federal court proceeding, along with the fact that it does not appear the assignment from Anvil to BONY can ever be recorded since it has been lost and Anvil is no longer in business, which suggests that the assignment cannot be replaced.

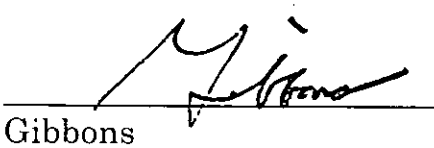
Moreover, although BONY did not record the original assignment from Anvil to BONY, it did record the 2019 lost-assignment affidavit and, as a result, the purpose of NRS 106.210 has been satisfied in that a title search of the subject property will reveal BONY's beneficial interest in the deed of trust, such that constructive notice has been imparted, *see Constructive Notice*, *Black's Law Dictionary* (12th ed. 2024)

(defining the phrase "constructive notice" as "[n]otice arising by presumption of law from the existence of facts and circumstances that a party has a duty to take notice of, such as a registered deed"). Thus, we conclude that the trust has failed to establish a basis for relief in this respect. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Jacob A. Reynolds, District Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

[6]Having reviewed the parties' remaining arguments, we conclude they do not present a basis for relief.