

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT T. SCHETTLER,  
Appellant,  
vs.  
NEW LAS VEGAS COUNTRY CLUB, A  
NEVADA NONPROFIT COOPERATIVE  
CORPORATION WITHOUT STOCK,  
Respondent.

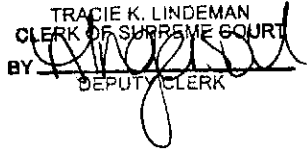
No. 61025

VINCENT T. SCHETTLER,  
Appellant,  
vs.  
NEW LAS VEGAS COUNTRY CLUB, A  
NEVADA NONPROFIT COOPERATIVE  
CORPORATION WITHOUT STOCK,  
Respondent.

No. 61591

**FILED**

FEB 13 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

These are consolidated appeals from a district court judgment, certified as final under NRCP 54(b), in a contract action and from a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Valerie Adair and Susan Scann, Judges.

The underlying case involved a dispute over unpaid country club membership fees. The district court granted respondent country club's motion for summary judgment on its claims for breach of contract and breach of the implied covenant of good faith and fair dealing after appellant became delinquent on his membership dues, incurred penalty fees, and did not attempt to cure his delinquency in compliance with club bylaws. The court awarded damages and post-judgment attorney fees and costs.

Appellant appeals, arguing that the district court erred in (1) rejecting his argument that his membership was void when the club

allegedly failed to follow its bylaws in issuing his membership in 2003, (2) rejecting his argument that the bylaws required the club to accept his attempted payment by cash or credit card, and (3) awarding attorney fees. As appellant has not raised a genuine issue of material fact as to these arguments, we decline to reverse the district court's order.

This court reviews a district court summary judgment order de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* To prevail on a breach of contract claim, the plaintiff must establish (1) the existence of a valid contract, (2) that plaintiff performed, (3) that defendant breached, and (4) that the breach caused plaintiff damages. *Saini v. Int'l Game Tech.*, 413 F. Supp. 2d 913, 919-20 (D. Nev. 2006); *Reichert v. Gen. Ins. Co. of Am.*, 442 P.2d 377, 381 (Cal. 1968).

Appellant first disputes the validity of his membership, arguing that the club did not issue a membership certificate and asserting that the club's failure to submit the certificate was evidence that established its nonexistence.<sup>1</sup> A nonstock, nonprofit cooperative corporation must issue a certificate to each member, NRS 81.430(2), but need not retain a copy. The terms and conditions of membership are governed by the bylaws, and members have no statutory rights as to the certificates. NRS 81.430(1). Here, the country club's bylaws place the burden to produce the certificate on the member, when the club so

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<sup>1</sup>Appellant further contends that the district court lacked subject-matter jurisdiction because of the alleged deficiencies in his membership. Appellant's membership status affects his substantive defenses, but does not impair the district court's jurisdiction over the proceeding.

requests. If a certificate is lost or destroyed, the bylaws require the member to file a lost certificate form or be at risk of expulsion. Appellant cites no legal authority in support of his argument that failure to issue a membership certificate would nullify a membership. Regardless, the record supports the validity of appellant's membership by containing copies of the membership cards of appellant and his wife, their shared membership application, the letter from her father requesting the transfer of the father's membership to the couple as a wedding gift, the numbered and dated stub from appellant's wife's certificate, and the uncontested statement that appellant paid dues and used club facilities for five years. Taking factual inferences in appellant's favor, he did not show a genuine issue of material fact as to the existence of the membership contract. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Appellant next argues that the club failed to follow its bylaws in transferring a membership to appellant. The bylaws provide that on approval of an applicant for membership, the club shall issue a membership certificate, the date of which shall be entered in club records. The evidence outlined above establishes that these procedures were followed. Appellant did not identify any factual support for his argument that the club failed to follow its bylaws, and therefore, this contention does not support reversal. *Id.*

Appellant also asserts that the club failed to follow its bylaws in refusing to accept payment by cash or credit card. The bylaws contain no requirement that the club must accept payment in any manner of tender. Generally, payment in the manner of the ordinary course of business satisfies a payment requirement. Restatement (Second) of Contracts § 249 (1981). Appellant's previous payments of his dues had

been by check. Appellant has not cited legal authority supporting the argument that the club must accept payment by cash or credit card. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider claims that are not cogently argued or supported by relevant authority). Thus, appellant cannot argue that he was prevented from meeting his obligation to pay his dues, as he made no effort to remit a check to cure his delinquency in the period of approximately one year between the suspension and the termination of his membership.<sup>2</sup>

Finally, appellant challenges the district court's award of attorney fees and costs. Appellant contends that the district court failed to consider the factors necessary for awarding attorney fees stated in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and erroneously allowed fees and costs relating to the litigation against the original plaintiffs/counter-defendants, a group that did not include appellant. This court reviews attorney fees and costs awards for an abuse of discretion. *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). The record demonstrates that the district court addressed the *Brunzell* factors during the hearing and in its order. Further, the court addressed appellant's objections regarding the allocation of fees and costs and respondent's counter-arguments, and concluded that the fees and costs requested were properly ascribed to the

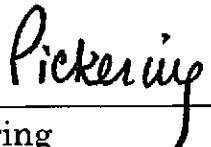
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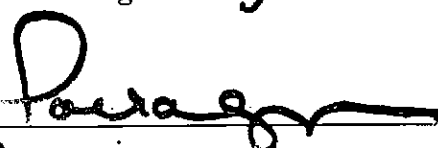
<sup>2</sup>Appellant also contests the district court summary judgment for the breach of good faith and fair dealing claim, but he failed to argue any grounds for reversal specific to this claim. We therefore affirm the district court summary judgment on this cause of action.


litigation against appellant. Therefore, the district court did not abuse its discretion in awarding attorney fees and costs. *Id.*

For the reasons discussed above, we affirm the district court's orders granting summary judgment and awarding attorney fees and costs.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Valerie Adair, District Judge  
Hon. Susan Scann, District Judge  
Leonard I. Gang, Settlement Judge  
Feldman Graf  
Dziminski & Associates  
Law Offices of John Benedict  
Eighth District Court Clerk