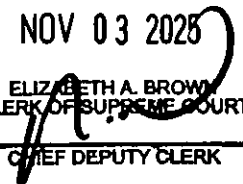


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANNY, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
NEWREZ, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 88811-COA

FILED
NOV 03 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

DANNY, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellant,
vs.
NEWREZ, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 89471-COA

ORDER OF AFFIRMANCE

Danny, LLC, appeals from a final order in an action to quiet title (No. 88811-COA) and a post-judgment order awarding attorney fees and costs (No. 89471-COA). These cases were consolidated on appeal. See NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Danny sued respondent Newrez, LLC d/b/a Shellpoint Mortgage Servicing (Shellpoint) for quiet title, wrongful foreclosure, and injunctive and declaratory relief. Danny alleged that it was the owner of the relevant property and that a deed of trust encumbered the property. Danny further alleged 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 Danny, Shellpoint was the beneficiary of the deed of trust and its interest in the subject property was extinguished under NRS 106.240, which was triggered by a notice of default, which Danny alleged accelerated the underlying debt in 2010. Danny also alleged that the underlying debt was accelerated and became wholly due upon the original borrower’s bankruptcy discharge in 2011. In addition, Danny asserted that the promissory note and deed of trust had been split and not reunified, and contended Shellpoint wrongfully sought to foreclose on the property. Moreover, Danny obtained a preliminary injunction to enjoin Shellpoint from proceeding with a foreclosure sale.

Shellpoint thereafter filed a motion to dismiss, arguing that Danny failed to state a claim upon which relief could be granted. Shellpoint contended that Danny’s NRS 106.240 claim failed and that Danny’s assertion that Shellpoint did not possess the note was inaccurate. Danny opposed the motion to dismiss and filed a countermotion for summary judgment. Danny asserted that, taken as true, its allegations stated valid claims. Danny also contended that the undisputed facts demonstrated that it was entitled to summary judgment as to its NRS 106.240 claim, because it contended the loan had become wholly due more than ten years ago and the deed of trust was accordingly extinguished pursuant to NRS 106.240. Shellpoint subsequently filed a reply in support of its motion to dismiss and opposed Danny’s motion for summary judgment.

The district court ultimately issued an order granting Shellpoint’s motion to dismiss in part, denying the motion to dismiss in part,

and denying Danny's countermotion for summary judgment. The court determined that Danny's NRS 106.240-based claim failed, and thus it granted Shellpoint's request to dismiss that claim and determined Danny was accordingly not entitled to summary judgment in its favor.¹ However, the district court determined that Danny's complaint plausibly alleged that Shellpoint did not possess the note and, taking Danny's allegations as true, it denied Shellpoint's motion to dismiss as to that issue.

Shellpoint later answered Danny's complaint and filed a counterclaim, seeking declaratory relief and alleging that it was entitled to monetary damages based upon unjust enrichment. Shellpoint alleged that Danny was unjustly enriched because Shellpoint paid the necessary property taxes and property insurance to protect its interest in the property after Danny failed to pay for those obligations while continuing to earn rental income from the property. Danny thereafter filed an answer to Shellpoint's counterclaim.

Shellpoint later filed a motion to vacate the preliminary injunction. It also filed a motion for summary judgment. Shellpoint asserted, among other things, that it was the beneficiary of the deed of trust and possessed the note such that the note and the deed of trust were

¹As Danny referred to the deed of trust in the operative complaint and the terms of the deed of trust were central to its allegations, and no party questioned the authenticity of the deed of trust, which was attached to the motion to dismiss, it was appropriate for the district court to review the deed of trust when evaluating the motion to dismiss. *See Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (explaining that when a district court evaluates a motion to dismiss, it can "consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document" (internal quotation marks omitted)).

reunified. Shellpoint also asserted that the undisputed facts demonstrated that the deed of trust was valid and that it was entitled to summary judgment as to its claim for unjust enrichment. In particular, Shellpoint asserted that the undisputed facts demonstrated that it possessed the note. It also asserted it had repeatedly offered to allow Danny to inspect the note but that Danny did not do so. In addition, Shellpoint asserted it was entitled to recovery on its unjust enrichment claim because Danny neglected to pay property taxes and maintain insurance on the property, and that Shellpoint had accordingly been forced to pay for those obligations in the amount of \$15,289.70. Shellpoint also requested the district court to expunge a lis pendens recorded against the property and to issue a permanent injunction barring Danny from interfering with the foreclosure proceedings. Finally, Shellpoint filed documents and affidavits in support of the motion, which included information related to the deed of trust and the note, and the tax and insurance payments it made to protect its interest in the property.

Danny thereafter filed an opposition to the motion to vacate the preliminary injunction. In that opposition, Danny expressly waived its claim concerning the possession of the note. Danny subsequently filed an opposition to the motion for summary judgment. Danny acknowledged that it had waived its claim concerning possession of the note and did not oppose summary judgment as to that claim. However, Danny opposed Shellpoint's request for summary judgment as to its counterclaim for unjust enrichment. Danny asserted Shellpoint's unjust enrichment counterclaim was barred by the voluntary payment doctrine.

Shellpoint replied, contending that the voluntary payment doctrine did not apply, as its payments were not voluntary and were made

to protect its interest in the property from a potential tax foreclosure action or other damages and encumbrances to the property affecting its interest.

Following a hearing, the district court ultimately entered a written order granting Shellpoint's motion for summary judgment, except it denied the request for a permanent injunction. It noted that Danny waived its note-related claim but also concluded that the undisputed facts demonstrated that Shellpoint possessed the note and that Danny's claim to the contrary accordingly lacked merit. The district court also determined that the undisputed facts demonstrated that Danny was not entitled to relief as to any of its additional claims.

In addition, the district court granted Shellpoint summary judgment as to its unjust enrichment claim, concluding Shellpoint conferred a benefit upon Danny by making the appropriate tax and insurance payments, Danny appreciated that benefit, and that Danny accepted the benefits under circumstances where it would be inequitable for Danny to retain those benefits. The district court further determined that the undisputed facts demonstrated that Shellpoint paid those amounts to protect its interest in the property so as to avoid further encumbrances on the property. The court also entered an order granting Shellpoint's motion to vacate the preliminary injunction.

Shellpoint later moved for an award of attorney fees and costs, pursuant to NRS 18.010(2)(a) as it was the prevailing party and recovered less than \$20,000, and NRS 18.010(2)(b) because Danny's claims were brought or maintained without reasonable grounds and to harass. In addition, Shellpoint argued the factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), supported its request for

an award of attorney fees, and it submitted billing records in support of its motion. Danny opposed the motion.

The district court ultimately granted Shellpoint's motion in part. The court determined that Shellpoint was entitled to attorney fees pursuant to NRS 18.010(2)(a) as it was the prevailing party and recovered less than \$20,000. The court also found that Danny's claims were brought and maintained without reasonable grounds and were pursued with an intent to harass Shellpoint; thus attorney fees were warranted pursuant to NRS 18.010(2)(b). In addition, the court addressed the appropriate *Brunzell* factors. However, the court rejected Shellpoint's request for fees for the work of its paralegal. In addition, the district court concluded that Shellpoint was entitled to costs. These appeals followed.

NRS 106.240

On appeal, Danny first challenges the district court's decision to dismiss its NRS 106.240 claim, arguing that dismissal was not appropriate given the factual allegations contained within its complaint. We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of 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.

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 Assoc.*, 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.

In addition, the supreme court has explained that the recording of a notice of default does not cause a debt to become wholly due because “a Notice of Default is not identified in NRS 106.240 as a document that can render a secured loan ‘wholly due’ for purposes of triggering the statute’s 10-year time frame.” *Id.* at 239, 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, Danny’s complaint did not identify any event that triggered NRS 106.240’s ten-year period. In its complaint, Danny alleged that either the notice of default or the original borrower’s bankruptcy proceedings triggered NRS 106.240’s ten-year period. However, as stated previously, the Nevada Supreme Court has determined that a notice of default does not render a loan wholly due for purposes of triggering NRS

106.240. *LV Debt Collect*, 139 Nev. at 239, 534 P.3d at 699. The supreme court has also determined that a borrower's bankruptcy discharge does not make an obligation wholly due for the purposes of NRS 106.240. *W. Coast Serv., Inc. v. Kassler*, No. 84122, 2023 WL 4057073, at *1 (Nev. June 16, 2023) (Order of Reversal and Remand). Moreover, Danny did not identify any language in the deed of trust suggesting that the original borrower's bankruptcy proceedings would cause the debt to become wholly due. See *Posner*, 140 Nev., Adv. Op. 22, 545 P.3d at 1153 (explaining that, under the plain language of NRS 106.240, absent a recorded extension of the due date, the terms of the mortgage or deed of trust control when the debt becomes "wholly due").

To the extent Danny relied on the acceleration clause contained in the deed of trust and asserted that a notice of the borrower's default triggered that clause such that the debt became wholly due, we are not persuaded by this argument because the borrower 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). Thus, we conclude the district court did not err by dismissing Danny's NRS 106.240 claim.

Unjust Enrichment

Next, Danny challenges the district court's decision to grant summary judgment in favor of Shellpoint as to its claim of unjust enrichment. Danny argues the voluntary payment doctrine should defeat Shellpoint's unjust enrichment claim.

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.

"Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) (internal quotation marks omitted). However, "[i]f applicable, the [voluntary payment doctrine] bars recovery under a theory of unjust enrichment." *Goldberg, Kershen & Altmann, LLC v. Kreiser*, Nos. 87677-COA and 88209-COA, 2025 WL

1482359, *4 (Nev. Ct. App. May 22, 2025) (Order Affirming in Part and Reversing in Part (No. 87677-COA) and Reversing (No. 88209-COA)).

“The voluntary payment doctrine is an affirmative defense that provides that one who makes a payment voluntarily cannot recover it on the ground that he was under no legal obligation to make the payment.” *Nev. Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 954, 338 P.3d 1250, 1253 (2014) (internal quotation marks omitted). “The ‘voluntary’ in the voluntary payment doctrine does not entail the mere payment of the bill or fee. Instead, it considers the willingness of a person to pay a bill without protest as to its correctness or legality.” *Id.* (internal quotation marks, emphasis, and citation omitted). One exception to the voluntary payment doctrine “is the payment in defense of property.” *Id.* at 958, 338 P.3d at 1256.

The district court determined that the undisputed facts demonstrated that Shellpoint conferred a benefit upon Danny as the aforementioned payments Shellpoint made allowed Danny to use the property as a source of income, Danny appreciated that benefit and accepted it, and that retention by Danny of that benefit under the circumstances in this matter would be inequitable. *See Certified Fire Prot. Inc.*, 128 Nev. at 381, 283 P.3d at 257; *see also Ocwen Loan Servicing, LLC v. Chersus Holdings, LLC*, No. 82680, 2022 WL 4283492, *2 (Nev. Sept. 15, 2022) (Order Affirming in Part, Reversing in Part, and Remanding) (stating “the benefit that respondent conferred upon appellant was the ability to use the property as a source of income” (internal quotation marks and emphasis omitted)). In addition, as noted previously, the district court determined that the undisputed facts demonstrated that Shellpoint was required to

make the aforementioned payments to protect the property and to avoid any further liens encumbering the property.

In its opening brief, Danny does not present cogent argument concerning, or even acknowledge, the district court's determination that the defense of property exception to the voluntary payment doctrine applied in this matter. As a result, Danny has forfeited any arguments related to this issue.² See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues that are not raised in an appellant's opening brief are deemed forfeited). Accordingly, Danny fails to demonstrate it is entitled to relief.³

Attorney fees

Next, Danny argues the district court abused its discretion in awarding Shellpoint attorney fees by finding that it brought or maintained its claims without reasonable grounds. This court reviews awards of attorney fees for an abuse of discretion. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485, 851 P.2d 459, 464 (1993). A district court abuses its discretion

²We note Danny contends in its reply brief that the defense of property exception should not apply. However, it forfeited that challenge by waiting to present any specific argument concerning that issue until its reply brief. See *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2. (2016) (providing that issues raised for the first time in a reply brief are deemed forfeited).

³Danny does not challenge the district court's decision to grant summary judgment in favor of Shellpoint as to any additional claims raised in its complaint. As a result, Danny has forfeited any argument related to the same. See *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

when its findings are not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018).

Pursuant to NRS 18.010(2)(a), the district court may award attorney fees to a prevailing party “[w]hen the prevailing party has not recovered more than \$20,000.” In addition, under NRS 18.010(2)(b), the district court may award attorney fees to a “prevailing party” when “the court finds that the claim . . . of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party.” There must be evidence in the record supporting the proposition that a claim was brought or maintained without reasonable grounds. *Chowdhry*, 109 Nev. at 486, 851 P.2d at 464. “For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it.” *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

Here, the district court found that Shellpoint was the prevailing party because the court granted summary judgment in its favor. The district court also determined that Shellpoint had not recovered more than \$20,000, and thus an award of attorney fees was warranted pursuant to NRS 18.010(2)(a).

In addition, the district court found Danny had no factual or good-faith basis to pursue its claim that Shellpoint did not possess the note. The court also found that Danny’s NRS 106.240 claim was frivolous based on the statute’s plain language, the deed of trust, and the relevant caselaw. The court accordingly concluded that Danny brought or maintained its claims without reasonable grounds or to harass Shellpoint. Moreover, the court concluded that Danny’s conduct throughout the litigation of this matter served only to delay foreclosure and increase Shellpoint’s costs. The court noted that Shellpoint informed Danny that it had the note and offered

to allow Danny to inspect it, but Danny did not thereafter inspect the note. Finally, the district court determined that Danny utilized pervasive bad-faith tactics and prolonged the litigation of this matter to allow it to continue to collect rental income from the property. *See Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993) (“[I]f the record reveals that counsel or any party has brought, maintained, or defended an action in bad faith, the rationale for awarding attorney fees is even stronger.”). Thus, the court determined that attorney fees were warranted pursuant to NRS 18.010(2)(b). Further, in awarding attorney fees the district court also reviewed the appropriate factors pursuant to *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.

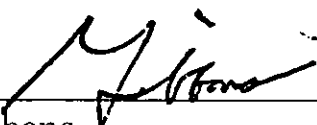
We conclude the district court did not abuse its discretion by finding that Shellpoint was the prevailing party and recovered less than \$20,000 such that attorney fees were warranted pursuant to NRS 18.010(2)(a). In addition, we conclude that substantial evidence supports the court’s finding that Danny’s claims were brought or maintained without reasonable grounds or to harass Shellpoint, *see Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (explaining that an analysis under NRS 18.010(2)(b) “depends upon the actual circumstances of the case rather than a hypothetical set of facts favoring plaintiff’s averments”), *superseded by statute on other grounds as recognized in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017), and that the court accordingly did not abuse its discretion by determining that attorney fees pursuant to NRS 18.010(2)(b) were warranted. In addition, the court’s findings pursuant to the *Brunzell* factors are supported by the record. Therefore, we discern no abuse of discretion in the district court’s award of

attorney fees in favor of Shellpoint.⁴ See *Chowdhry*, 109 Nev. at 485, 851 P.2d at 464.

In light of the foregoing, we conclude Danny is not entitled to relief, and we

ORDER the judgments of the district court AFFIRMED.⁵


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁴To the extent Danny also challenges the district court's award of costs, it fails to provide cogent argument or relevant authority regarding the propriety of this award, and therefore, we decline to consider this issue on appeal. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

⁵In the notice of appeal for Docket No. 88811-COA, Danny identified an order denying its request for leave to file an amended complaint and an order granting Shellpoint's motion to vacate the preliminary injunction as orders it sought to challenge on appeal. However, Danny does not present argument concerning those orders. As a result, Danny has forfeited any argument related to the same. See *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

In addition, 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.

cc: Hon. Crystal Eller, District Judge
Hong & Hong
Henriod Stern
Akerman LLP/Las Vegas
Eighth District Court Clerk