

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BROOKS REALTY GROUP, LLC, A
DOMESTIC LIMITED LIABILITY
COMPANY,

Appellant,

vs.

PORTFOLIO PP, LLC, A DOMESTIC
LIMITED LIABILITY COMPANY,
Respondent.

No. 89264-COA

FILED

MAR 18 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brooks Realty Group, LLC, appeals from a final judgment in an action involving a real estate contract dispute. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Respondent Portfolio PP, LLC filed the operative complaint in October 2022 against appellant Brooks Realty Group, LLC (BRG), alleging claims of breach of contract, unjust enrichment, breach of the covenant of good faith and fair dealing, and for declaratory relief. Portfolio's claims stemmed from a failed real estate transaction related to a residential property (the Tonopah property) in Las Vegas. The complaint alleged the following. Portfolio's assignors, Dan and Ginger Anderson, entered into a residential purchase agreement (RPA) with BRG for Portfolio to purchase the Tonopah property in June 2022. The parties subsequently executed addenda 1 through 4, extending the close of escrow several times and ultimately to August 31, releasing \$20,000 in earnest money to BRG, and releasing \$188,439.40 in net proceeds to BRG. After receiving the earnest money and net proceeds, BRG unilaterally canceled the transaction on

August 9 in contravention of the RPA and precluded the buyers from purchasing the Tonopah property. BRG retained the earnest money and unlawfully retained the net proceeds and later sold the property to a third party.

BRG thereafter filed a motion to dismiss, arguing in part that Portfolio lacked standing to bring any claims because it was not a party to the RPA or a real party in interest. Rather, BRG argued the Andersons were the buyers who entered into the RPA with BRG and there was no effective assignment to Portfolio. The motion explained that the RPA contained an anti-assignment clause which explicitly stated that the RPA was non-assignable unless agreed upon in writing by all parties. It also clarified that addendum 2 provided that the buyers would be taking title to the Tonopah property in the name of Portfolio, but that alone was not a valid assignment. BRG further asserted that, after addendum 3 and the final close of escrow date, which BRG contended was July 15 and not August 31, no further addenda were entered into by the parties.

BRG attached to its motion the RPA, which showed that the buyers were "Dan Anderson & Ginger Anderson or Assignee." The Andersons initialed and signed the document as buyers. BRG also attached to its motion the various addenda. Addenda 1 through 3 were signed by the Andersons as the buyers and Devin Brooks as the seller, though all identified the buyer as the Andersons or their assignee. Addendum 3 extended the close of escrow to July 15 and provided that the buyers would deposit \$188,439.40 (seller's net proceeds) into escrow with an agreement that those funds, along with the brokers' commissions, would be released no later than 5:00 p.m. on July 11. Addendum 4 purported to extend the close of escrow to August 31 and provided, among other things, that "Assignee to

be Portfolio PP officers Greg Clemens and Christina Roush.” Further, Addendum 4 provided that buyer assignment documents would be provided to escrow no later than July 31. The Andersons signed addendum 4, but it was never fully executed because Brooks returned a redlined copy which the Andersons never accepted. Portfolio opposed the motion to dismiss, and the district court denied the motion, concluding that Portfolio had standing to bring the action.

Subsequently, the parties filed competing motions for summary judgment. Portfolio attached to its motion, in relevant part, individual declarations from the Andersons stating that they were not claiming any rights or interest pursuant to the RPA and had assigned all rights to Portfolio. In its motion for summary judgment, BRG argued again that the undisputed facts demonstrated Portfolio did not have standing to bring suit because it was not a party to the RPA and there was no valid assignment of rights to Portfolio, which was required to be in writing per the RPA. Both parties opposed the other’s motion for summary judgment.

The district court held a hearing on the motions for summary judgment, and the minutes show that the court stated the matter would be addressed during a bench trial and that the trial would be over the limited issue of whether the net proceeds were consideration for extending the close of escrow to July 15 (i.e., whether addendum 3 controlled). The case then proceeded to a bench trial.

Following the bench trial, the district court entered a written order regarding summary judgment and entering judgment in favor of Portfolio on the unjust enrichment claim. As to summary judgment, the court found that Portfolio had standing as a real party in interest based on the RPA and addendum 2. Specifically, the court found that the RPA

provided that the buyer was the Andersons "or Assignee," which modified the RPA's anti-assignment clause and by executing the RPA, BRG agreed that the buyer was either the Andersons or their assignee. Further, addendum 2 stated that the buyer would take title in the name of Portfolio. That language, combined with the language in the RPA, demonstrated the parties' intent and agreement that the RPA could be and was assigned, and Brooks' signature on that addendum was a written acknowledgement of such. Furthermore, the Andersons had assigned any right or claim they had under the RPA to Portfolio for the purposes of litigation. Consequently, the court determined Portfolio was a real party in interest and had standing to bring the action.

With regard to the bench trial and the claim of unjust enrichment, the district court found that the evidence demonstrated the net proceeds were transferred to Brooks on July 14 or 15 and, therefore, based on the testimony and timing of the transfer, addendum 3, which provided the buyers would release the proceeds by July 11, did not control the parties' dispute. Rather, the court found that the parties renegotiated the terms of addendum 3, had an oral agreement to release the net proceeds in exchange for an extension of the closing date to August 31, and that addendum 4 would follow to reflect that agreement. However, Brooks did not sign addendum 4 and instead accepted the net proceeds and made material changes to it before cancelling the property purchase altogether.

The district court found that the buyers relied on the oral agreement and released the net proceeds in performance of that agreement. However, the court concluded that the statute of frauds rendered the oral agreement unenforceable. Notwithstanding that unenforceability, the court concluded that the buyers were entitled to restitution in the amount

of the net proceeds to prevent Brooks from being unjustly enriched. Because the oral agreement was not enforceable, the court found in favor of BRG on the claims of breach of contract and breach of the covenant of good faith and fair dealing. It made no finding regarding declaratory relief because it found that was a remedy and not a cause of action. This appeal followed.

On appeal, BRG first argues that Portfolio lacked standing to bring the lawsuit because it was not a party to the RPA and there was not a valid assignment from the Andersons. 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.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

In the district court's order on appeal, in addressing the standing issue, the court noted caselaw recognizing that where the district court will act as the trier of fact and there are no issues of witness credibility, the court may conclude from the evidence before it that there is no dispute of material fact, even if that decision depends on inferences from what has been proved in ruling on a motion for summary judgment. *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1123-24 (5th Cir. 1978)); see also *In re Placid Oil Co.*, 932 F.2d 394, 398 (5th Cir. 1991) (“[I]t makes little sense to forbid the judge from drawing inferences from the evidence submitted on summary judgment when that same judge will act as the trier of fact, unless those inferences involve issues of witness credibility or disputed material facts.”). The district court relied on *Nunez* and other similar federal cases

in determining that summary judgment in favor of Portfolio was appropriate on the issue of standing. Neither party challenges the district court's application of that law, so we likewise apply it here in reviewing the district court's decision. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (stating that issues that are not raised on appeal are deemed forfeited).

Standing is a question of law reviewed de novo. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). This court also reviews a district court's interpretation of a contract, a question of law, de novo. *Nevada State Educ. Ass'n v. Clark Cnty. Educ. Ass'n*, 137 Nev. 76, 80, 482 P.3d 665, 671 (2021). NRCP 17(a)(1) provides that "[a]n action must be prosecuted in the name of the real party in interest." A real party in interest "is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983). The inquiry into whether a party is a real party in interest overlaps with the question of standing. *Id.*

"Under ordinary rules of contract law, a contractual right is assignable unless assignment materially changes the terms of the contract or the contract expressly precludes assignment." *Easton Bus. Opp. v. Town Executive Suites*, 126 Nev. 119, 124, 230 P.3d 827, 830 (2010) (citing Restatement (Second) of Contracts § 317(2)(a)-(c) (Am. L. Inst. 1981)). "Because the law looks with favor on the free assignability of rights and frowns on restrictions that would limit or preclude assignability, . . . [a]nti-assignment clauses [are] narrowly construed." *Id.* (internal quotation marks omitted). "To be effective, [an] anti-assignment clause should contain a specific prohibition on the power to make an assignment and specifically state that any attempted assignments will be void or invalid."

Id. (quoting 29 Richard A. Lord, *Williston on Contracts* § 74:22 (4th ed. 2003)); see Restatement (Second) of Contracts § 322.

Here, in addressing whether Portfolio had standing, the district court looked to the parties' contracts—the RPA and addendum 2—and recognized an inconsistency with regard to whether the contract permitted assignments. See *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (explaining that a contract is ambiguous if its terms may reasonably be interpreted in more than one way). The court concluded that the anti-assignment clause was modified by the various parts of the RPA that identified the buyers as the Andersons or their assignee. Additionally, the court found that addendum 2 provided that the buyer would take title in the name of Portfolio. The court concluded that together, that demonstrated the parties' intent and agreement that the RPA could be and was assigned. Further, the court determined that BRG's representative's signature on the contracts was an acknowledgement of the assignment. As a result, the district court concluded that there was a valid assignment and that Portfolio was a real party in interest to the proceedings. Based on the undisputed facts, we conclude the district court properly determined that there was a valid assignment, particularly where the anti-assignment clause did not specify that any attempted assignments would be void or invalid. See *Easton*, 126 Nev. at 124, 230 P.3d at 830 (explaining that to be effective, an anti-assignment clause should, in part, "specifically state that any attempted assignments will be void or invalid" (internal quotation marks omitted)).

Additionally, the Andersons made clear that Portfolio was their assignee by signing declarations during the summary judgment proceedings unequivocally stating that they had assigned their rights to the contract to

Portfolio during the litigation, which rendered Portfolio a real party in interest to the litigation. *See Easton*, 126 Nev. at 126, 230 P.3d at 831-32 (2010) (clarifying that “it is today taken as settled law that [t]here is no general requirement as to when an assignment must be made and . . . even when the claim is not assigned until after the action has been instituted, the assignee is the real party in interest and can maintain the action.” (internal quotation marks omitted)); *see also Federal Deposit Ins. Corp. v. Hurdman*, 655 F. Supp. 259, 267 (E.D. Cal. 1987) (noting that if the assignor provides post-suit confirmation of the assignment, the objecting defendant is protected from inconsistent claims; whether treated as an assignment or a ratification, this is enough to establish a plaintiff’s real party in interest status under Fed. R. Civ. P. 17(a)). Further, the Andersons’ declarations stated that they were not claiming any interest or rights pursuant to the RPA and, therefore, were sufficient to achieve the purpose of NRCP 17(a) by eliminating any potential concern that they could enforce the contract. *See Easton*, 126 Nev. at 125-27, 230 P.3d at 831-32 (2010) (observing, among other things, that the purpose of NRCP 17(a) “is simply to protect the defendant against a subsequent action by the party actually entitled to recover” (quotation marks omitted)). As such, we conclude the district court properly found the Andersons validly assigned their rights to Portfolio and that Portfolio had standing.

Next, BRG argues the district court erred following the bench trial by finding in favor of Portfolio on its unjust enrichment claim because such a remedy is not available where there is a written contract—the RPA in this case—and because the statute of frauds precludes such a claim. This court reviews a district court’s legal conclusions following a bench trial de novo, but we will not disturb the district court’s factual findings “unless they

are clearly erroneous or not supported by substantial evidence.” *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008) (internal quotation marks omitted).

To recover for unjust enrichment, a plaintiff must show that it conferred a benefit on the defendant, that the defendant appreciated the benefit, and that the defendant accepted and retained the benefit under circumstances where it would be inequitable for the defendant not to reimburse the plaintiff. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). This doctrine is applicable “where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another or should pay for.” *Leasepartners Corp. v. Robert L. Brooks Tr.*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997) (internal quotation marks and brackets omitted).

Here, the district court found that the release of the net proceeds by July 11 was originally intended to be consideration for BRG extending the closing date to July 15 under addendum 3. However, the buyers were warned that they would lose the net proceeds if they did not timely close, and when they realized they could not timely close, the parties renegotiated the extension of the closing date prior to releasing the net proceeds and did not release the money until approximately July 14 or 15. The court further found that the testimony demonstrated the net proceeds were not released until the buyers had confirmation from BRG’s representative of a new agreement to extend the closing date to August 31 (addendum 4); that BRG’s representative made clear that Brooks would not

sign the new agreement until the net proceeds were transferred to him; that BRG's representative assured the buyers that Brooks would sign addendum 4 as soon as the net proceeds were released; that the buyers released the net proceeds based on these negotiations, yet Brooks did not sign addendum 4 after receiving the money and instead made material changes, although he did not alter the August 31 closing date; and that the parties initially continued to attempt to work out differences and meet the August 31 closing date.

In light of this testimony, the district court found that the buyers did not transfer the net proceeds pursuant to addendum 3. Rather, the court found that buyers transferred the net proceeds to BRG in reliance on and in performance of the oral agreement to extend the closing date to August 31, which the buyers believed would be reduced to a signed writing based on representations from BRG's representative. However, BRG then canceled the purchase agreement, which prevented the buyers from purchasing the property. The district court concluded that while the oral agreement based on addendum 4 was unenforceable based on the statute of frauds and there was therefore no legal contract, Portfolio was nevertheless entitled to restitution based on unjust enrichment because it conferred a benefit on BRG (the net proceeds), BRG appreciated the benefit of the net proceeds, and that result was inequitable based on the unilateral cancellation of the contract.

In other words, the district court made factual findings and credibility determinations based on the evidence presented at trial in determining that addendum 3 did not control and that the parties instead renegotiated the terms of that agreement and only agreed to release the net proceeds because BRG agreed to extend the closing date to August 31.

BRG's argument on appeal—that addendum 3 was the controlling contract—relies on a review of this evidence. However, we do not reweigh the district court's credibility determinations. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (“[C]redibility determinations and the weighing of evidence are left to the trier of fact.”). Further, our review of this issue is hampered without the trial transcripts. As the appellant, BRG had the burden to provide this court with an appropriate record to review its arguments and, because it failed to provide the trial transcripts, we must necessarily presume those transcripts support the district court's findings and resulting decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, “we necessarily presume that the missing [documents] support[] the district court's decision”).

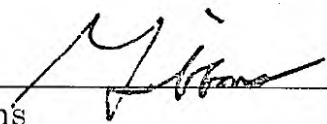
Additionally, contrary to BRG's contention, the statute of frauds does not preclude the pursuit of a claim for unjust enrichment. *See* NRS 111.205(1) (stating that the transfer of an interest in real property is subject to Nevada's statute of frauds, which generally requires a conveyance of real property to be set forth in a properly executed written instrument); 66 Am. Jur. 2d Restitution and Implied Contracts § 72 (providing that “[a] person who renders performance under an agreement that cannot be enforced against the recipient by reason of . . . the failure to satisfy an extrinsic requirement of enforceability such as the Statute of Frauds, has a claim in restitution against the recipient as necessary to prevent unjust enrichment.”); *see also* Restatement (Third) of Restitution and Unjust Enrichment § 31 (Am. L. Inst. 2011) (stating the same). We therefore

conclude that the district court did not err by granting judgment in favor of Portfolio on its unjust enrichment claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Hong & Hong
Sylvester & Polednak, Ltd.
Eighth District Court Clerk