

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GOLDEN CREEK HOLDINGS, INC., A
DELAWARE CORPORATION,
Appellant,
vs.
NEWREZ, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING, A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 89290-COA

FILED

MAR 18 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Golden Creek Holdings, Inc., appeals from a district court final order in an action to quiet title. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Golden Creek sued respondent Newrez, LLC, d/b/a Shellpoint Mortgage Servicing (Shellpoint), for quiet title and wrongful foreclosure, and also sought declaratory and injunctive relief. Golden Creek alleged that it was the owner of the relevant property and that a deed of trust encumbered the property. Golden Creek further alleged, among other things, 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 Golden Creek, Shellpoint’s interest in the subject property, as the beneficiary of the deed of trust, was extinguished under NRS 106.240, which was triggered by an acceleration of the underlying debt in 2009.

Shellpoint thereafter answered the complaint and filed several counterclaims, including ones for unjust enrichment and quiet title. Golden

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Creek subsequently moved to dismiss Shellpoint's counterclaims under NRCP 12(b)(5) for failure to state a claim and Shellpoint opposed. As relevant to this matter, the district court denied Golden Creek's motion to dismiss Shellpoint's unjust enrichment counterclaim, determining that Shellpoint presented sufficient factual allegations to state a claim for which relief could be granted. Golden Creek did not thereafter file an answer to Shellpoint's counterclaims. *See* NRCP 12(a)(1)(B) (requiring a party to serve an answer to a counterclaim); NRCP 12(a)(3)(A) (stating that a party must serve a responsive pleading within 14 days after service of notice of entry of the district court's denial of a motion filed under that rule).

Shellpoint later filed a motion for judgment on the pleadings asserting, among other things, that the facts as alleged for Golden Creek's NRS 106.240 claim were insufficient to state a valid claim and that Shellpoint was entitled to judgment as a matter of law. Shellpoint contended, among other things, that none of the events discussed by Golden Creek triggered NRS 106.240's ten-year period, and thus, NRS 106.240 did not extinguish the deed of trust. Golden Creek opposed the motion, arguing that it provided sufficient allegations such that Shellpoint was not entitled to judgment in its favor. Shellpoint subsequently filed a reply in support of the motion.

The district court later issued a written order granting Shellpoint's motion. The court ruled the plain language of NRS 106.240 precluded events, such as the ones alleged by Golden Creek, from triggering the ten-year period under NRS 106.240.¹ The district court accordingly granted judgment in favor of Shellpoint as to that claim.

¹As Golden Creek 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

Shellpoint subsequently filed a motion for summary judgment, contending, among other things, that the undisputed facts demonstrated that it was entitled to judgment in its favor as to its claims for unjust enrichment and quiet title. Shellpoint asserted it was entitled to recover on its unjust enrichment claim because Golden Creek neglected to pay property taxes or HOA dues and maintain insurance on the property, and that Shellpoint had accordingly been forced to pay for those obligations in the amount of \$25,542.27. In addition, Shellpoint noted that Golden Creek had not filed an answer to the counterclaims as required by NRCP 12(a)(1)(B). Moreover, Shellpoint filed documents and affidavits in support of the motion, which included information related to the payments it made to protect its interest in the property.

Golden Creek opposed Shellpoint's request for summary judgment as to its counterclaim for unjust enrichment. Golden Creek asserted Shellpoint's unjust enrichment counterclaim was barred by the voluntary payment doctrine.

Shellpoint replied, first contending that Golden Creek waived the affirmative defense of the voluntary payment doctrine by failing to specifically plead such an affirmative defense in an answer to the counterclaim. Shellpoint also argued that the voluntary payment doctrine

attached to the motion for judgment on the pleadings, it was appropriate for the district court to review the deed of trust when granting the motion. *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)); *see also Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993-94, 340 P.3d 1264, 1266 (2014) (noting that the review for an NRCP 12(b)(5) motion is similar to the review of an NRCP 12(c) motion).

did not apply, as the undisputed facts demonstrated its payments were not voluntary and were made to protect its interest in the property from a potential tax or HOA foreclosure action, or to protect from other damages and encumbrances to the property affecting its interest.

The district court ultimately granted summary judgment in Shellpoint's favor as to its unjust enrichment claim, concluding Shellpoint conferred a benefit upon Golden Creek by making the appropriate tax, HOA, and insurance payments; Golden Creek appreciated that benefit; and Golden Creek accepted the benefits under circumstances where it would be inequitable for Golden Creek to retain those benefits. The court further determined that Golden Creek waived an affirmative defense based on the voluntary payment doctrine because it did not file an answer pleading that as an affirmative defense. The district court also concluded the undisputed facts demonstrated the deed of trust remained valid and that Shellpoint was entitled to quiet title in its favor. This appeal followed.

NRS 106.240

On appeal, Golden Creek first challenges the district court's decision to grant judgment on the pleadings as to its NRS 106.240 claim, arguing that judgment in favor of Shellpoint was not appropriate given the factual allegations contained within its complaint.² "Under NRCP 12(c), the district court may grant a motion for judgment on the pleadings when the material facts of the case are not in dispute and the movant is entitled to judgment as a matter of law." *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014) (internal quotation marks omitted).

²Because Golden Creek does not challenge the district court's decision to grant judgment in favor of Shellpoint concerning its additional claims, it has forfeited any challenge thereto as a result. *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).

“Because an order granting a motion for judgment on the pleadings presents a question of law, our review of such an order is de novo.” *Id.* “As with a dismissal for failure to state a claim, in reviewing a judgment on the pleadings, we will accept the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party.” *Id.* at 993-94, 340 P.3d at 1266.

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, because the terms of the deed of trust did not render the debt wholly due upon the original borrower's default and allowed the opportunity for the borrower to cure the default, NRS 106.240's ten-year period was not triggered by either the default or any purported lender's letter concerning the default. To the extent Golden Creek relies on the acceleration clause contained in the deed of trust and asserts that this clause made the debt 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 that, under the language of the deed of trust, neither the default nor the letter could have accelerated the due date on the loan, and thus the ten-year period under NRS 106.240 was not triggered. As a result, Golden Creek fails to demonstrate that it is entitled to relief

based on this argument, and we therefore affirm the district court's order granting judgment on the pleadings.

Unjust Enrichment

Next, Golden Creek challenges the district court's decision to grant summary judgment in favor of Shellpoint as to its claim of unjust enrichment. Golden Creek 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 & 88209-COA, 2025 WL 1482359, at *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). “Because the voluntary payment doctrine is an affirmative defense, the defendant bears the burden of proving its applicability.” *Id.* at 955, 338 P.3d at 1254. However, “[a]n affirmative defense that is not pleaded in the answer is waived.” *Paulos v. FCH1, LLC*, 136 Nev. 18, 28 n.4, 456 P.3d 589, 597 n.4 (2020); *see also JPMorgan Chase Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 70423, 2019 WL 292823, at *2 (Nev. Jan. 17, 2019) (Order Affirming in Part, Reversing in Part, and Remanding) (“Although the district court granted summary judgment based on the voluntary payment doctrine, we agree with appellant that respondent waived that doctrine by failing to assert it as an affirmative defense.”).

The district court determined that the undisputed facts demonstrated that Shellpoint conferred a benefit upon Golden Creek as the aforementioned payments Shellpoint made allowed Golden Creek to use the property as a source of income, Golden Creek appreciated that benefit and accepted it, and that retention by Golden Creek 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, at *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)). The district court also determined that the undisputed facts demonstrated that Shellpoint was required to make the aforementioned payments to protect the property and to avoid tax enforcement proceedings or proceedings related to HOA assessments.

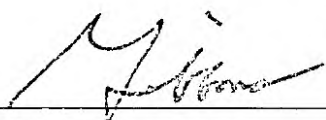
In addition, as noted previously, the district court determined that Golden Creek waived the affirmative defense of the voluntary payment doctrine by failing to assert it in an answer to Shellpoint's counterclaims. In its opening brief, Golden Creek does not present cogent argument concerning, or even acknowledge, the district court's determination that it waived the affirmative defense by failing to answer Shellpoint's counterclaims. As a result, Golden Creek has forfeited any arguments related to this issue.³ 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) ("Issues not raised in an appellant's opening brief are deemed [forfeited]."). Accordingly, Golden Creek fails to demonstrate it is entitled to relief.⁴ Thus, we

³We note Golden Creek appears to contend in its reply brief that it did not waive the voluntary payment doctrine because it raised arguments concerning that doctrine in a motion to dismiss Shellpoint's counterclaims. However, it forfeited that challenge by waiting to present 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).

⁴Golden Creek does not challenge the district court's decision to grant summary judgment in favor of Shellpoint as to any additional counterclaims. As a result, Golden Creek has forfeited any argument related to the same. See *Palmieri*, 131 Nev. at 1033 n.2, 367 P.3d at 446 n.2 (stating that issues that are not raised on appeal are deemed forfeited).

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Persi J. Mishel, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk

⁵Insofar 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.

In addition, Shellpoint has requested that this court sanction Golden Creek pursuant to NRAP 38 on the ground that this appeal is frivolous. We note that counsel for Golden Creek has raised substantially similar arguments concerning application of NRS 106.240 on appeal in other matters, those arguments have been soundly rejected by the appellate courts, and this court has recently issued orders cautioning counsel for Golden Creek that this court may impose sanctions under NRAP 38 when it “determines that an appeal is frivolous or was brought or maintained without reasonable ground or solely for purposes of delay, or whenever the appellate processes of the court have otherwise been misused.” *TWT Inv.s., LLC v. Nationstar Mortg., LLC*, No. 88984-COA, 2025 WL 2741615, at *3 n.3 (Nev. Ct. App. Sept. 25, 2025) (Order of Affirmance) (internal quotation marks omitted); *see also Norman, LLC v. Affinia Default Servs., LLC*, No. 88524-COA, 2025 WL 3248511, at *3 n.3 (Nev. Ct. App. Nov. 20, 2025) (Order of Affirmance). Because Golden Creek submitted its opening brief prior to the warning given in our earlier orders, we decline to issue a sanction at this time. But we again warn counsel for Golden Creek that this court may impose sanctions under NRAP 38 should counsel pursue a frivolous appeal or misuse the appellate process of the court.