



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

4655 GRACEMONT AVE TRUST, A
NEVADA TRUST,
Appellant,
vs.
THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2006-OC11 MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2006-OC11,
Respondent.

No. 89710-COA

ORDER OF AFFIRMANCE

4655 Gracemont Ave Trust (Gracemont) appeals from a district court order granting a motion for summary judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Gracemont was the owner of a residential property and initiated an action to quiet title. In the operative complaint, Gracemont raised several claims involving respondent the Bank of New York Mellon (BoNYM), the beneficiary of a deed of trust encumbering the property. As relevant to this matter, Gracemont alleged that the deed of trust had been extinguished as a matter of law under NRS 106.240, which it alleged was triggered by a notice of intent to accelerate the underlying debt sent to the original borrower in 2008.

BoNYM later answered the complaint and filed several counterclaims, including one for unjust enrichment. BoNYM subsequently filed a motion for summary judgment contending, among other things, that

there was no genuine dispute of material fact as to whether NRS 106.240 extinguished the deed of trust as none of the events alleged by Gracemont triggered that statute. BoNYM also asserted the undisputed facts demonstrated that it was entitled to judgment in its favor as to its claim for unjust enrichment. BoNYM asserted it was entitled to recover on its unjust enrichment claim because Gracemont neglected to pay property taxes or maintain insurance on the property, and that BoNYM had accordingly been forced to pay for those obligations in the amount of \$24,834.97. Moreover, BoNYM filed documents and affidavits in support of the motion, which included information related to the tax and insurance payments.

Gracemont opposed the motion, arguing that there remained genuine disputes of material fact as to whether BoNYM 's interest in the subject property was extinguished under NRS 106.240. Gracemont also argued summary judgment concerning BoNYM's counterclaim for unjust enrichment was not warranted, as it was barred by the voluntary payment doctrine.

BoNYM replied, contending that the voluntary payment doctrine did not bar its recovery, as the undisputed facts demonstrated that the business necessity exception to the voluntary payment doctrine applied. BoNYM further asserted that it had no commercially reasonable alternative to paying the aforementioned expenses.

The district court issued a written order in which it concluded that there was no genuine dispute of material fact and BoNYM was entitled to summary judgment as a matter of law. The court ruled, as relevant to this matter, that the plain language of NRS 106.240 precluded events, such as the ones alleged by Gracemont, from triggering the ten-year period under NRS 106.240. In addition, the district court granted BoNYM summary

judgment as to its unjust enrichment claim, determining that the undisputed facts demonstrated that the voluntary payment doctrine did not bar BoNYM's unjust enrichment claim, as BoNYM risked immediately losing its interest in the property if it did not make the aforementioned payments. This appeal followed.

On appeal, Gracemont challenges the district court's decision to grant summary judgment in favor of BoNYM. 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.

First, Gracemont argues the district court erred by granting summary judgment in favor of BoNYM because it contends there remain genuine disputes of material fact concerning its NRS 106.240 claim. In support of its argument, Gracemont asserts that the terms of the deed of trust permitted acceleration of the loan; the lender sent the original borrower a notice more than ten years ago indicating its intent to accelerate the loan secured by the deed of trust; and because the loan was accelerated, the deed of trust that secured that debt was extinguished pursuant to NRS 106.240.

However, Gracemont's arguments are contrary to several decisions issued by the Nevada Supreme Court. *See LV Debt Collect, LLC v. Bank of N.Y. Mellon*, 139 Nev. 232, 236-37, 534 P.3d 693, 698 (2023)

(explaining that recording a notice of default to institute nonjudicial foreclosure proceedings does not trigger NRS 106.240's 10-year time frame in part because of the statutory cure period); *ARNS Fund, LLC v. JPMorgan Chase Bank, N.A.*, No. 88661, 2025 WL 3251312, at *1 (Nev. Nov. 20, 2025) (Order Affirming in Part, Reversing in Part and Remanding) (stating that “merely defaulting on a loan or sending a letter informing the homeowner of their default [was] insufficient to trigger NRS 106.240 ” and rejecting an argument that the terms of the deed of trust rendered the debt wholly due when the borrower had the opportunity to cure the default).

As a result, we conclude that, under the language of the deed of trust that provided the borrowers an opportunity to cure a default, neither the default nor a notice sent to the original borrower could have accelerated the due date on the loan, and thus the ten-year period under NRS 106.240 was not triggered. Therefore, we conclude no genuine disputes of material fact remain and the district court did not err by granting summary judgment as to this issue.

Second, Gracemont challenges the district court’s decision to grant summary judgment in favor of BoNYM as to its claim of unjust enrichment. Gracemont argues the voluntary payment doctrine should defeat BoNYM’s unjust enrichment claim.

“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, “[i]f an exception [to the voluntary payment doctrine] applies, a plaintiff is not precluded from recovering a payment that it made without protest.” *Id.* One exception to the voluntary payment doctrine that may permit recovery is “coercion or duress caused by a business necessity.” *Id.* at 956, 338 P.3d at 1254. “Business necessity constituting duress occurs when the payor has only a single commercially reasonable course of action, despite the fact that the action involves a choice, in some limited sense.” *Id.* (internal quotation marks omitted).

Here, BoNYM claimed it was entitled to recover its expenses for property tax and insurance based on unjust enrichment. In response to Gracemont’s assertion that the voluntary payment doctrine should bar BoNYM’s unjust enrichment claim, BoNYM argued that the business necessity exception applied because it had no commercially reasonable alternative but to make the aforementioned payments as the risk of loss was too great without those actions.

The district court determined that the undisputed facts demonstrated that BoNYM conferred a benefit upon Gracemont as Gracemont did not make the aforementioned payments, Gracemont appreciated that benefit and accepted it, and the retention by Gracemont 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 Serv., 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)). In addition, the court determined that the undisputed facts demonstrated that BoNYM was required to make the aforementioned payments as it risked the immediate loss of its interest in the property if it did not pay the property related expenses. The district court further noted that Gracemont did not point to any facts that disputed BoNYM’s claim for unjust enrichment. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.* , 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (explaining that the party opposing summary judgment assumes the burden of production to demonstrate the existence of a genuine dispute of material fact after the party moving for summary judgment meets its initial burden of production).

In its opening brief, Gracemont does not present cogent argument concerning, or even acknowledge, the business necessity exception to the voluntary payment doctrine. As a result, Gracemont has forfeited any arguments related to this issue. *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).

We also note that BoNYM argued in its answering brief that the district court did not err by granting summary judgment in its favor because the business necessity exception to the voluntary payment doctrine applied in this matter. However, Gracemont did not respond to that argument in its reply brief. We therefore elect to treat Gracemont's failure to respond to this argument as a concession that BoNYM's argument is meritorious. See *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that the argument is meritorious). In light of the foregoing, we determine that Gracemont fails to demonstrate it is entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED. ¹



Bulla, C.J.



Gibbons, J.



Westbrook, J.

¹Insofar 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.

We have considered BoNYM's request for this court to issue an order to show cause and decline to do so at this time.

cc: Hon. Mark R. Denton, District Judge
Jay Young, Settlement Judge
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk