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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BIG ROCK ASSETS MANAGEMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY AND NORMAN, LLC, A NEVADA LIMITED LIABILITY COMPANY, Appellants, vs. NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING, A DELAWARE LIMITED LIABILITY COMPANY, Respondent.	No. 90127-COA

ORDER OF AFFIRMANCE

Big Rock Assets Management, LLC, and Norman, LLC, appeal from a district court order granting a motion for summary judgment and vacating a preliminary injunction in an action to quiet title. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Appellants were the owners of a residential property and initiated an action to quiet title. In the complaint, appellants raised several claims involving respondent Newrez LLC d/b/a Shellpoint Mortgage Servicing, the beneficiary of a deed of trust encumbering the property. As relevant to this matter, appellants 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 2011. Appellants also moved for a preliminary injunction to halt the pending sale of the relevant property, which the district court later granted.

Newrez thereafter answered the complaint and filed several counterclaims, including ones for unjust enrichment and quiet title. Newrez later filed a motion for summary judgment, contending 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 appellants triggered that statute. Newrez also contended that the undisputed facts demonstrated that it was entitled to judgment in its favor as to its claims for unjust enrichment and quiet title. Newrez asserted it was entitled to recover on its unjust enrichment claim because appellants neglected to pay property taxes or HOA dues and maintain insurance on the property, and that Newrez had accordingly been forced to pay for those obligations. In addition, Newrez noted that appellants had not filed an answer to the counterclaims as required by NRCP 12(a)(1)(B). Moreover, Newrez 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.

Appellants opposed Newrez's motion for summary judgment, asserting that genuine disputes of fact remained. Appellants also asserted Newrez's unjust enrichment counterclaim was barred by the voluntary payment doctrine.

Newrez replied, first contending that appellants waived the affirmative defense of the voluntary payment doctrine by failing to specifically plead such an affirmative defense in an answer to the counterclaim. Newrez also argued that the voluntary payment doctrine 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 Newrez's favor. The court ruled, as relevant to this matter, that the plain language of NRS 106.240 precluded events, such as the ones alleged by appellants, from triggering the ten-year period under NRS 106.240. Concerning Newrez's unjust enrichment claim, the court determined the undisputed facts demonstrated that Newrez conferred a benefit upon appellants by making the appropriate tax, HOA, and insurance payments; appellants appreciated that benefit; and appellants accepted the benefit under circumstances where it would be inequitable for appellants to retain the benefit. The court further determined that appellants waived an affirmative defense based on the voluntary payment doctrine because it did not file an answer pleading that as an affirmative defense. Alternatively, the court determined that the undisputed facts demonstrated that the defense of property exception to the voluntary payment doctrine applied in this matter. The court accordingly determined that Big Rock owed $7,168.02 and Norman owed $5,922.39 in damages. The district court also concluded the undisputed facts demonstrated the deed of trust remained valid and that Newrez was entitled to quiet title in its favor. In addition, the district court vacated the preliminary injunction. This appeal followed.

NRS 106.240 claim

On appeal, appellants first challenge the district court's decision to grant summary judgment in favor of Newrez concerning the NRS 106.240 claim because it contends there remain genuine material disputes of fact. In support of their argument, appellants assert that the terms of the deed of trust permitted acceleration of the loan; the lender sent the original borrowers 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.

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.

Having considered the parties' arguments and the record before this court, we conclude no genuine disputes of material fact remain and the district court did not err by granting summary judgment in favor of Newrez.

Appellants' 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, appellants fail to demonstrate that they are entitled to relief.

Unjust enrichment claim

Next, appellants challenge the district court's decision to grant summary judgment in favor of Newrez as to its claim of unjust enrichment, arguing the voluntary payment doctrine should defeat that claim. However, we conclude appellants fail to demonstrate the district court committed error. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

"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). Moreover, one exception to the voluntary payment doctrine "is the payment in defense of property." *Id.* at 958, 338 P.3d at 1256.

In addition, "[b]ecause 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.").

Here, the district court determined that the undisputed facts demonstrated that Newrez conferred a benefit upon appellants as the aforementioned payments Newrez made allowed them to use the property as a source of income, appellants appreciated that benefit and accepted it, and the retention by appellants 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 court also determined that appellants waived the affirmative defense of the voluntary payment doctrine by failing to assert it in an answer to Newrez's counterclaims. Alternatively, the district court determined that the undisputed facts demonstrated that the defense of property exception to the voluntary payment doctrine applied because Newrez was required to make the aforementioned payments to preserve the value of the property and to avoid tax enforcement proceedings or proceedings related to HOA assessments.

On appeal, appellants do not present cogent argument concerning, or even acknowledge, the district court's determination that it waived the affirmative defense of the voluntary payment doctrine by failing to plead it in an answer to Newrez's counterclaims. As a result, appellants have forfeited any arguments related to this issue. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that issues an appellant does not raise on appeal are forfeited); *see also Hung v. Genting Berhad*, 138 Nev. 547, 549-50, 513 P.3d 1285, 1287-88 (Ct. App. 2022) (providing that an appellant generally must challenge all the independent alternative grounds relied upon by the district court, otherwise the ruling will be affirmed).

Moreover, in their opening brief, appellants do not present cogent argument concerning the district court's determination that the defense of property exception to the voluntary payment doctrine applied in this matter. As a result, appellants have forfeited any arguments related to this issue.[1] *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

[1]We note appellants contend in their reply brief that the defense of property exception should not apply. However, they forfeited that challenge by waiting to present any specific argument concerning that issue until their 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).

(2011) (stating that issues that are not raised in an appellant's opening brief are deemed forfeited). Therefore, appellants fail to demonstrate the district court erred by granting summary judgment in favor of Newrez.

Having concluded appellants fail to demonstrate they are entitled to relief, we

ORDER the judgment of the district court AFFIRMED.[2]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

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[2]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.

In addition, Newrez requests the imposition of NRAP 38 sanctions. However, we decline to impose such sanctions as Newrez does not demonstrate that this appeal was frivolous in its entirety. *See Woods v. Label Inv. Corp.*, 107 Nev. 419, 427, 812 P.2d 1293, 1299 (1991) (rejecting a request for attorney fees on appeal when the appellant did not raise frivolous arguments), *disapproved of on other grounds by Hanneman v. Downer*, 110 Nev. 167, 871 P.2d 279 (1994)); *see also Anaya-Alvarado v. Anaya-Alvarado*, No. 84869-COA, 2023 WL 2033364, at *1 n.8 (Nev. Ct. App. Feb. 15, 2023) (Order of Affirmance) (declining to award attorney fees under NRAP 38 because the "appeal in its entirety is not frivolous, nor does it appear to have been undertaken solely for purposes of delay").

cc: Hon. Veronica Barisich, District Judge
Hong & Hong
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Eighth District Court Clerk