



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KWANZA GREEN,
Appellant,
vs.
BILL BRANDT FORD, INC. AND
CAPITAL ONE AUTO FINANCE,
Respondents.

No. 91505-COA

ORDER OF AFFIRMANCE

Kwanza Green appeals from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Green filed an amended complaint alleging that respondents Bill Brandt Ford, Inc. (Bill Brandt Ford) and Capital One Auto Finance (Capital One) engaged in fraudulent misrepresentation; unfair business practices; and violated the Truth in Lending Act, the California Business and Professions Code, and the Racketeer Influenced and Corrupt Organizations Act. She alleged that respondents improperly inflated the contract price for a vehicle she purchased, made false reports to the credit bureaus, and did not report accurate information to the Department of Motor Vehicles. Green sought monetary damages, declaratory relief, the earnings from her contract securitization placed in a constructive trust, disgorgement, injunctive relief, and to void the contract and extinguish the lien on her vehicle.

Respondents moved to dismiss pursuant to NRCP 12(b). They asserted that Bill Brandt Ford is located in California, Green purchased the vehicle that is subject to the litigation in California, the financing contract was executed in California, and the contract states that California law applies to

any disputes. As a result, they asserted that under the facts alleged they did not have sufficient contacts with Nevada for the district court to have personal jurisdiction over them. Respondents alternatively asserted that the matter should be dismissed to allow for arbitration pursuant to the contract terms.

Green filed several documents seeking default judgment and to otherwise strike the motion to dismiss. She did not respond to the arguments raised in the motion to dismiss or attend the hearing on the motion.

The district court ultimately granted the motion to dismiss, noting the arguments raised by respondents, as outlined above, and further noting that Green failed to dispute these assertions in any filing and she further failed to attend the hearing on the motion to dismiss. This appeal followed.

On appeal, Green contends that the district court exceeded the scope of NRCP 12 in dismissing the petition because it considered evidentiary matters instead of the legal sufficiency of the pleading. She asserts that the district court should not have considered competing documents at the pleading stage. She contends that the district court impermissibly relied on the arbitration clauses in the contract submitted with the motion to dismiss. She also argues that the record does not indicate that Capital One was an assignee or transferee and thus whether it had standing to move to dismiss.

Green failed to oppose respondents' argument in the motion to dismiss that the district court lacked jurisdiction over respondents and she does not challenge the district court's conclusion concerning personal jurisdiction over the respondents on appeal until her reply brief. *See Fick v. Fick*, 109 Nev. 458, 462, 851 P.2d 445, 448 (1993) (explaining that appellate courts need not consider an argument raised for the first time on appeal); *see also Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (stating that an argument made for the first time in a reply brief is deemed

forfeited). In addition, Green does not challenge the district court's determination that her claims arise out of a sales contract executed in California, for a vehicle delivered in California, and from respondents who were located in California. *See Fullbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 36, 342 P.3d 997, 1001 (2015) (“[A] nonresident defendant must have sufficient minimum contacts with the forum state so that subjecting the defendant to the state’s jurisdiction will not offend traditional notions of fair play and substantial justice.” (internal quotation marks and citation omitted)). Nor does she present any argument suggesting that she made a prima facie showing that personal jurisdiction over respondents was proper. *See Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692-93, 857 P.2d 740, 743-44 (1993) (requiring plaintiff to introduce evidence to make a prima facie showing that personal jurisdiction exists when challenged by a defendant).

Because Green failed to properly challenge the district court’s decision to dismiss her amended complaint for lack of personal jurisdiction over respondents, she has forfeited any arguments related to the same. *See 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].”). Moreover, because Green attached the contract and other documents containing information concerning respondents to her amended complaint, she does not demonstrate that the district court erred by reviewing those documents when evaluating the motion to dismiss. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (providing that the district court “may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint” when reviewing a motion to dismiss). Under these circumstances, we conclude that Green fails to demonstrate the district court erred by granting

respondents' motion to dismiss. *See Fulbright & Jaworski*, 131 Nev. at 35, 342 P.3d at 1001 (explaining appellate courts review “de novo a district court’s determination of personal jurisdiction”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Anna C. Albertson, District Judge
Brown, Bonn & Friedman, LLP
Kwanza N. Green
Eighth District Court Clerk

¹Insofar as Green raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.