



IN THE SUPREME COURT OF THE STATE OF NEVADA

8933 SQUARE KNOT 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
2005-41 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-41, A
DELAWARE LIMITED LIABILITY
COMPANY, A NATIONAL
ASSOCIATION,
Respondent.

No. 90372

Appeal from a district court order granting respondent's motion to dismiss an amended complaint in a quiet title action. Eighth Judicial District Court, Clark County; Danielle Pieper, Judge.

Reversed and remanded.

Hong & Hong Law Office and Joseph Y. Hong, Las Vegas,
for Appellant.

Akerman LLP and Scott R. Lachman and Nicholas E. Belay, Las Vegas,
for Respondent.

BEFORE THE SUPREME COURT, STIGLICH, CADISH, and LEE, JJ.

OPINION

By the Court, STIGLICH, J.:

NRCP 12(b) allows defendants to move to dismiss a civil complaint on six different grounds. Generally, defendants may not file a successive NRCP 12(b) motion to dismiss that “rais[es] a defense or objection that was available to the party but omitted from its earlier motion.” NRCP 12(g)(2). One exception to this rule is moving to dismiss for lack of subject-matter jurisdiction. NRCP 12(g)(2); *see also* NRCP 12(h)(3) (stating that a court must dismiss an action “at any time” upon finding “that it lacks subject-matter jurisdiction”).

In this case, on remand to the district court, respondent Bank of New York Mellon (BNYM) filed a second motion to dismiss appellant 8933 Square Knot Trust’s (SKT) complaint, raising new grounds for dismissal that it did not raise in its first motion to dismiss. Citing *Nevada Policy Research Institute, Inc. v. Miller (NPRI)*, 140 Nev., Adv. Op. 69, 558 P.3d 319 (2024), for the proposition that a party can move to dismiss a case pursuant to NRCP 12(b)(5) on new grounds on remand, the district court granted the motion and ordered dismissal. SKT now appeals from that order of dismissal, arguing that NRCP 12(g)(2) barred BNYM from moving to dismiss again on remand.

We agree with SKT in part. NRCP 12(g)(2) does not permit a party to move to dismiss a complaint on grounds it could have raised in an earlier motion but did not, on remand or otherwise. As BNYM asserted a statutory standing argument for the first time in its second motion to dismiss, the district court erred in granting the motion and dismissing

SKT's complaint on that ground. Parties may, however, raise lack of subject-matter jurisdiction as a defense at any time, *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011), so NRCP 12(g)(2) did not prohibit BNYM from newly raising this argument. We evaluate subject-matter jurisdiction as of the time the case was filed. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 325-26, 130 P.3d 1280, 1285-86 (2006) (holding that, after a district court obtains jurisdiction over an action requesting injunctive relief, it retains jurisdiction over the action even after injunctive relief is denied). Because the district court had jurisdiction at the outset, it thus retained jurisdiction over the case on remand. We therefore reverse the order of dismissal and remand for proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

In 2005, a third party purchased real property at 8933 Square Knot Avenue in Las Vegas. She did so with a loan obtained from Countrywide Home Loans that was secured by a deed of trust. In 2012, Countrywide assigned the deed of trust to BNYM. That same year, the third party defaulted on her HOA payments, resulting in the HOA foreclosing on the property. Countrywide tendered an amount to satisfy the superpriority portion of the HOA lien before the sale, but the HOA refused it, foreclosed, and subsequently quitclaimed the deed to SKT. In 2017, BNYM sued SKT in federal court to quiet title to the property. After lengthy litigation, the federal courts ruled that the deed of trust, which BNYM then held, survived the HOA foreclosure sale.

As neither the third party nor SKT had made payments on the loan secured by the deed of trust, BNYM had the deed trustee institute foreclosure proceedings on the property. A year later, SKT mailed a letter

to BNYM pursuant to NRS 107.200 requesting information. BNYM did not reply, and SKT thereafter sued BNYM to stop the foreclosure, seeking to quiet title, requesting injunctive relief, and asserting several substantive claims, including BNYM's failure to reply to the letter in violation of NRS 107.300. BNYM later replied and foreclosed on the property.

After the foreclosure, the district court dismissed SKT's complaint for failure to state a claim under NRCP 12(b)(5). On appeal, we reversed the dismissal of SKT's NRS 107.300 claim, concluding that SKT's complaint "satisfied NRCP 12(b)(5)'s motion-to-dismiss standard." 8933 *Square Knot Tr. v. Bank of N.Y. Mellon*, No. 87301, 2024 WL 4523905, at *2 (Nev. Oct. 17, 2024) (Order Affirming in Part, Reversing in Part, and Remanding). On remand, BNYM filed a second motion to dismiss the NRS 107.300 claim, this time on jurisdictional and statutory standing grounds. SKT opposed on the basis that BNYM was not permitted to file a successive motion to dismiss and, alternatively, on the basis that this court's order already adjudicated the new grounds for dismissal. The district court disagreed, concluding that BNYM was permitted to file a second motion to dismiss, and granted BNYM's motion on both grounds. SKT timely appealed.

DISCUSSION

On appeal, SKT argues that BNYM should not have been permitted to raise statutory standing and subject-matter-jurisdiction claims in a second motion to dismiss. Alternatively, SKT contends that our previous order already addressed those claims such that it is the law of the case that SKT had standing to pursue the NRS 107.300 claim and that the district court had subject-matter jurisdiction.

NRCP 12(g)(2) prevents BNYM from moving to dismiss based on SKT's alleged lack of statutory standing

SKT asserts that, as BNYM already unsuccessfully moved to dismiss the NRS 107.300 claim, it could not move to dismiss a second time. BNYM retorts that this court's caselaw permits new motions to dismiss on remand. Alternatively, BNYM argues that it was entitled to move to dismiss the NRS 107.300 claim a second time because "this case started from scratch on" that claim. Lastly, BNYM argues that because it could file its motion to dismiss under a different rule, this court should affirm the district court regardless of whether NRCP 12(g)(2) bars the second motion.

This court interprets the NRCP de novo. *See Webb ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009). When the NRCP uses "must," then "the rule's requirements are mandatory." *Vanguard Piping Sys., Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013).

The NRCP "govern the procedure in all civil actions and proceedings in the district courts." NRCP 1. NRCP 12(b) permits a party to move to dismiss a pleading for several reasons. Relevantly, under NRCP 12(b)(5), a party may assert that the opposing party did not have standing to bring the claim. *See Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634 & n.26, 137 P.3d 1171, 1180 & n.26 (2006) (holding that a lack of shareholder derivative standing "justifies dismissal of the complaint for failure to state a claim upon which relief may be granted"), *abrogated on other grounds by Chur v. Eighth Jud. Dist. Ct.*, 136 Nev. 68, 458 P.3d 336 (2020), and by *Guzman v. Johnson*, 137 Nev. 126, 483 P.3d 531 (2021). However, under NRCP 12(g)(2), "a party that makes a motion under [NRCP 12] *must not* make another motion under this rule raising a defense or objection that was

available to the party but omitted from its earlier motion.” (Emphasis added.) There are, however, two relevant exceptions to this rule. First, NRCP 12(g)(2) exempts motions to dismiss for lack of subject-matter jurisdiction pursuant to NRCP 12(h)(3). Second, a district court may consider arguments made in an NRCP 12(b)(5) motion to dismiss on remand if the party preserved those arguments by including them in its first NRCP 12(b)(5) motion to dismiss. *NPRI*, 140 Nev., Adv. Op. 69, 558 P.3d at 331.

NPRI is our most recent pronouncement on NRCP 12(g)(2). There, we held that the district court did not err in declining to strike a party’s motion to dismiss on remand as successive. *Id.* at 331. The respondent, the moving party in that case, had filed an initial motion to dismiss the complaint that included both jurisdictional and substantive defenses, and the district court granted the motion to dismiss on jurisdictional grounds without considering the substantive defenses. *Id.* After we reversed and remanded the case, the respondent renewed its substantive defenses, and the district court dismissed the complaint on those grounds. *Id.* We held that NRCP 12(g)(2) “does not bar a subsequent motion to dismiss where a district court granted dismissal on a jurisdictional issue without considering the merits [of the motion to dismiss] and an appellate court reversed the dismissal and remanded the matter.” *Id.* We noted that “[i]t would be an absurd outcome to prevent the district court from considering the merits on a *renewed* motion after it dismissed for a lack of standing.” *Id.* (emphasis added). Thus, parties who initially succeed on NRCP 12(b)(5) motions to dismiss may reassert any unadjudicated but preserved claims in a new NRCP 12(b)(5) motion on remand. *Id.* Contrary to BNYM’s contention, however, *NPRI* does not give

parties license to assert any claims that they could have brought up in the earlier motion to dismiss but chose not to.

Here, unlike in *NPRI*, BNYM's second motion to dismiss was not a renewal of unadjudicated defenses raised in the first motion. Indeed, in its initial motion, BNYM moved to dismiss the NRS 107.300 claim because it did not adequately allege "what specific information [BNYM] failed to provide" and failed to plead "facts supporting a willful violation for the alleged failure to respond." On remand, BNYM moved to dismiss on new subject-matter-jurisdiction and statutory standing grounds. NRCP 12(g)(2) and 12(h)(3) plainly allow a party to raise subject-matter-jurisdiction claims after an initial NRCP 12(b)(5) motion has been filed, therefore, we conclude that the district court did not err in considering the dismissal motion on those grounds.

We also conclude, however, that the district court did err in permitting BNYM to move to dismiss on statutory standing grounds. NRCP 12(g)(2) prevents a party from filing a successive motion to dismiss for reasons that were "available to the party but omitted from its earlier motion." BNYM's second motion to dismiss did exactly that: the statutory standing argument was available when BNYM first moved to dismiss, yet BNYM failed to raise it until the proceedings on remand.¹

¹BNYM cursorily asserts that standing may be raised at any time because it is jurisdictional, citing a California case for that proposition. *Cf. Applera Corp. v. MP Biomed., LLC*, 93 Cal. Rptr. 3d 178, 192 (2009). Unlike California, we have expressly declined to determine whether constitutional standing is jurisdictional. *Superpumper, Inc. v. Leonard*, 137 Nev. 429, 433 n.2, 495 P.3d 101, 106 n.2 (2021). Moreover, statutory standing is distinct from constitutional standing. *Stockmeier v. Nev. Dep't of Corr. Psych. Rev. Panel*, 122 Nev. 385, 393, 135 P.3d 220, 226 (2006),

We find BNYM’s assertion that “[o]n remand, this case started from scratch,” unpersuasive in this context. This argument relies on a misquote of *Guisti v. Guisti*, which held “reversal [of a motion to dismiss] was to leave the litigation in the situation it was prior to the entry of the judgment.” 44 Nev. 437, 441, 196 P. 337, 338 (1921). *Guisti* does not stand for the proposition that reversal erases the existence of a previous motion to dismiss; rather, it requires that litigation continue on remand where it left off. *Guisti* therefore does not implicate NRCP 12(g)(2) in this context.²

Similarly unavailing is BNYM’s argument that NRCP 12(g)(2) did not prohibit the subsequent motion to dismiss because it could refile it instead as a motion for judgment on the pleadings. Although BNYM titled its second motion as a “Motion to Dismiss [the] Amended Complaint or, Alternatively, Judgment on the Pleadings,” the district court considered and granted it as a motion to dismiss. As pleadings had not closed yet, a motion for judgment on the pleadings was untimely, and the district court

abrogated on other grounds by Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008). As BNYM offers neither authority nor cogent argument to support its assertion that statutory standing is jurisdictional, we decline to address this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (declining to address noncogently argued and supported issues). “A party may not simply point toward a pile of sand and expect the court to build a castle. In both district and appellate courts, the development of an argument is a party’s responsibility, not a judicial duty.” *Salt Lake City v. Kidd*, 435 P.3d 248, 255 (Utah 2019).

²BNYM cites to two other cases as proof that parties are allowed to make new arguments in a second motion to dismiss on remand, but the scope of NRCP 12(g)(2) was not at issue in either of these cases. *Cf. Golden Boy Promotions, Inc. v. Pound for Pound Promotions, Inc.*, No. 80883, 2021 WL 4206271 (Nev. Sep. 15, 2021) (Order of Reversal and Remand); *Soro v. Eighth Jud. Dist. Ct.*, 133 Nev. 882, 411 P.3d 358 (Ct. App. 2017).

properly declined to consider it in that capacity. NRCP 12(c)(2) (stating that a party may file a motion for judgment on the pleadings only “[a]fter the pleadings are closed”); *see also Bagelmania Holdings, LLC v. RDH Interests, Inc.*, 141 Nev., Adv. Op. 62 n.1, 580 P.3d 749, 753 n.1 (2025) (noting that pleadings are closed when the last party has filed its responsive pleading).

Because NRCP 12(g)(2) prevents a party from asserting new grounds for dismissal on remand, the district court erred in considering BNYM’s statutory standing argument. BNYM’s subject-matter-jurisdiction argument, on the other hand, was not similarly barred, so the district court did not err in considering dismissal on that ground.³

The district court had subject-matter jurisdiction over SKT’s complaint

BNYM argues that the district court lacked subject-matter jurisdiction over the NRS 107.300 claim because SKT did not allege over \$15,000 in damages in its complaint. SKT, in turn, argues that this court already determined that the district court had jurisdiction.

Nevada district courts have “original jurisdiction in all cases excluded by law from the original jurisdiction of justices’ courts.” Nev. Const. art. 6, § 6(1). Nevada’s justice courts have jurisdiction in property disputes where the alleged damages are \$15,000 or less. NRS 4.370(1)(b). We have interpreted these two provisions to hold that district courts “possess[] original jurisdiction . . . over claims for injunctive relief.” *Edwards*, 122 Nev. at 324, 130 P.3d at 1284; *see also Seaborn v. First Jud. Dist. Ct.*, 55 Nev. 206, 222, 29 P.2d 500, 505 (1934) (“The general rule is that, if a court of equity obtain jurisdiction of a controversy on any ground

³Given our conclusion, we do not reach the merits of the statutory standing argument.

and for any purpose, it will retain jurisdiction for the purpose of administering complete relief.”); *Jasper Cnty. Lumber Co. v. Biscamp*, 77 S.W.2d 571, 572 (Tex. Civ. App. 1934) (“The jurisdiction of the district court to hear and determine injunction suits does not necessarily depend upon the amount in controversy.”). When a district court properly exercises subject-matter jurisdiction over a case in initially considering the complaint, it retains that subject-matter jurisdiction throughout the pendency of the case. *See Edwards*, 122 Nev. at 326, 130 P.3d at 1286.

Edwards is particularly instructive. There, petitioner Paul Edwards allegedly received “two unsolicited advertisements” to his fax machine. *Id.* at 321-22, 130 P.3d at 1283. Edwards then sued for injunctive relief, \$3,000 in damages pursuant to the Telephone Consumer Protection Act, and at least \$10,000 in compensatory damages under state law. *Id.* at 322, 130 P.3d at 1283. The district court declined to grant Edwards the injunctive relief he sought and dismissed for lack of subject-matter jurisdiction. *Id.* at 325-26, 130 P.3d at 1285-86. We reversed, concluding that the district court’s jurisdiction did not expire along with Edwards’ chance at injunctive relief. *Id.* at 326, 130 P.3d at 1286. In doing so, we cited a Texas case for the proposition that jurisdiction attaches “upon the filing of the suit.” *Id.* at 326 n.21, 130 P.3d at 1286 n.21 (citing *Dopps v. Dopps*, 636 S.W.2d 723, 725 (Tex. App. 1982)).

Here, SKT filed a complaint in the Eighth Judicial District Court seeking injunctive relief, monetary damages over \$15,000, and quiet title. At the inception of the case, the district court had subject-matter jurisdiction, as SKT properly pleaded over \$15,000 in damages and

requested equitable relief.⁴ Because jurisdiction attaches at and persists from this point in time, the district court retained jurisdiction even though the only remaining claim on remand, the NRS 107.300 claim, pleaded less than \$15,000 in damages.⁵ We therefore conclude the district court erred in dismissing the claim, and we reverse and remand for further proceedings.⁶

CONCLUSION

NRCP 12(g)(2) prevents subsequent motions to dismiss that raise new arguments, with limited exceptions. Thus, parties that file a second motion to dismiss under NRCP 12(b) are confined to renewing arguments made in the first motion to dismiss unless one of the exceptions applies, such as the exception for challenges to subject-matter jurisdiction, which may be raised at any time. The district court thus erred in permitting BNYM to file a motion to dismiss on new, nonjurisdictional grounds. And as SKT's initial complaint met the district court's jurisdictional requirements and subject-matter jurisdiction is determined at the time the complaint was filed, the district court erred in finding that it lost jurisdiction over a remaining NRS 107.300 claim upon dismissal of the other

⁴We reject BNYM's interpretation of the district court's finding in the first order of dismissal that the NRS 107.300 claim did not allege over \$15,000 in damages as a finding that it lacked subject-matter jurisdiction over the entire action.

⁵This conclusion makes it unnecessary to consider whether it was the law of the case that SKT pleaded over \$15,000 in damages.

⁶We also decline to overturn *Buzz Stew*, 124 Nev. 224, 181 P.3d 670, as BNYM has not shown why our liberal pleading standard is unworkable.

claims. Accordingly, we reverse the order of dismissal and remand for further proceedings consistent with this opinion.⁷



Stiglich, J.

We concur:



Cadish, J.



Lee, J.

⁷BNYM also requests sanctions under NRAP 38 “because it is frivolous and quite unreasonable to bring a fourth appeal over \$300.” As we rule in favor of SKT, we necessarily decline the request.