



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EAST CACTUS 2112 TRUST, A
NEVADA TRUST,
Appellant,
vs.

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE CERTIFICATE
HOLDERS OF THE CWALT, INC.
ALTERNATIVE LOAN TRUST 2006-
OC3, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-OC3,
Respondent.

No. 89929-COA

EAST CACTUS 2112 TRUST, A
NEVADA TRUST,
Appellant,
vs.

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE CERTIFICATE
HOLDERS OF THE CWALT, INC.
ALTERNATIVE LOAN TRUST 2006-
OC3, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-OC3,
Respondent.

No. 90955-COA

ORDER OF AFFIRMANCE

East Cactus 2112 Trust appeals from a district court order granting a motion for summary judgment in an action to quiet title (No. 89929-COA) and a post-judgment order awarding attorney fees and costs (No. 90955-COA). These cases were consolidated on appeal. *See* NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Hon. Timothy C. Williams, Judge.

East Cactus was the owner of a residential property and initiated an action to quiet title. In its complaint, East Cactus 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, East Cactus alleged that the deed of trust had been extinguished as a matter of law under NRS 106.240, as it alleged more than ten years had passed since the debt secured by the deed of trust was accelerated. East Cactus further alleged that BoNYM willfully violated NRS 107.200-.300 by failing to timely respond to East Cactus' request for information regarding the debt secured by the deed of trust.

BoNYM thereafter answered the complaint and filed several counterclaims, including ones for unjust enrichment and quiet title. BoNYM 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 East Cactus triggered that statute. In addition, BoNYM contended that the undisputed facts demonstrated that East Cactus's NRS 107.200-.300 claim lacked merit, as East Cactus did not make a proper request for information concerning the debt secured by the deed of trust under those statutes. Specifically, BoNYM argued that the undisputed facts demonstrated East Cactus did not satisfy NRS 107.270 because it mailed its request for information to a different entity and to an address in Utah, when the address it should have mailed the request to was in New York.

BoNYM also contended that the undisputed facts demonstrated it was entitled to judgment in its favor as to its claims for unjust enrichment and quiet title. BoNYM asserted it was entitled to recover on its unjust enrichment claim because East Cactus neglected to pay property taxes and that BoNYM

had accordingly been forced to pay that obligation. Moreover, BoNYM 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.

East Cactus opposed the motion. East Cactus argued that a genuine dispute of fact remained as to its NRS 106.240 and NRS 107.200-.300 claims. East Cactus also asserted BoNYM's unjust enrichment counterclaim was barred by the voluntary payment doctrine.

BoNYM replied, first noting that East Cactus failed to demonstrate that summary judgment regarding the NRS 106.240 and NRS 107.200-.300 claims was unwarranted. BoNYM also argued that East Cactus failed to demonstrate that the voluntary payment doctrine defeated the unjust enrichment counterclaim, as the undisputed facts demonstrated that both exceptions to the voluntary payment doctrine, coercion or duress caused by a business necessity and payments made in defense of property, applied in this matter.

The district court ultimately granted summary judgment in BoNYM'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 East Cactus, from triggering the ten-year period under NRS 106.240. The court also determined the undisputed facts demonstrated that East Cactus' NRS 107.200-.300 claim lacked merit. Concerning BoNYM's unjust enrichment counterclaim, the court determined the undisputed facts demonstrated that BoNYM conferred a benefit upon East Cactus by making the appropriate tax payments; East Cactus appreciated that benefit; and East Cactus accepted the benefit under circumstances where it would be inequitable for it to retain the benefit. The court further determined the undisputed facts demonstrated that the voluntary payment doctrine did not defeat BoNYM's unjust enrichment

counterclaim, as both the business necessity and defense of property exceptions applied. The court accordingly determined that East Cactus owed \$2,214.62 in damages. The district court also concluded that the undisputed facts demonstrated the deed of trust remained valid and that BoNYM was entitled to quiet title in its favor.

BoNYM thereafter moved for an award of attorney fees. BoNYM argued it was entitled to an award of attorney fees pursuant to NRS 18.010(2)(a) because it was the prevailing party and recovered less than \$20,000 damages. Alternatively, BoNYM contended it was entitled to an award of attorney fees based on NRCP 68 as it asserted it served East Cactus with an offer of judgment in the amount of \$5,000, East Cactus did not accept the offer of judgment, and East Cactus failed to obtain a judgment more favorable than the offer of judgment. BoNYM also addressed the factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), and it submitted its billing records in support of its motion. BoNYM also sought an award of costs pursuant to NRS 18.020 and filed a memorandum of costs. East Cactus thereafter opposed BoNYM's motion.

The district court subsequently granted BoNYM's motion. The court found, among other things, that an award of attorney fees was warranted pursuant to NRS 18.010(2)(a). In addition, the court addressed the appropriate *Brunzell* factors and awarded BoNYM attorney fees in the amount of \$94,344.50. The district court also concluded that BoNYM was entitled to costs in the amount of \$3,328.32. These appeals followed.

Docket No. 88929-COA

On appeal, East Cactus 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.

NRS 106.240 claim

First, East Cactus challenges the grant of summary judgment as to its NRS 106.240 claim, arguing there remain genuine disputes of material fact. In support of its argument, East Cactus asserts that the terms of the deed of trust permitted acceleration of the loan; the lender indicated its intent to accelerate the loan secured by the deed of trust more than ten years ago; and because the loan was accelerated, the deed of trust that secured that debt was extinguished pursuant to NRS 106.240.

Having considered the parties' arguments and the record before this court, we conclude no genuine disputes of material fact remain concerning the NRS 106.240 claim. East Cactus'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 the undisputed facts demonstrate that the ten-year period under NRS 106.240 was not triggered by any events identified by East Cactus. Therefore, East Cactus fails to demonstrate it is entitled to relief based on this argument. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

NRS 107.200-.300 claim

Second, East Cactus argues the district court erred by granting summary judgment concerning its NRS 107.200-.300 claim. East Cactus argues there remains a genuine dispute of fact as to whether BoNYM willfully failed to comply with its request for information concerning the debt secured by the deed of trust.

Taken together, NRS 107.200 and NRS 107.210 provide that “the beneficiary of a deed of trust . . . shall, within 21 days after receiving a request from a person authorized to make such a request . . . cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement regarding the debt secured by the deed of trust” and “the amount necessary to discharge the debt secured by the deed of trust.” In addition, NRS 107.270 states that the request for the aforementioned information regarding the debt “must be made to the address to which the periodic payments under the note are made. If no periodic payments are made under the note, the request must be mailed to the address of the beneficiary listed on the note or deed of trust.”

Here, the undisputed facts show that East Cactus did not mail its request to BoNYM for information concerning the debt secured by the deed of trust to an address described under NRS 107.270. As the undisputed facts

support that East Cactus did not mail its request to an address mandated by NRS 107.270, East Cactus fails to demonstrate that the district court erroneously determined that its NRS 107.200-.300 claim lacked merit. *See Kay v. Nunez*, 122 Nev. 1100, 1104, 146 P.3d 801, 804 (2006) (explaining that appellate review of an issue of statutory interpretation is de novo); *see also Fassari v. Fassari*, No. 90183-COA, 2025 WL 2989906, *5 (Nev. Ct. App. Oct. 25, 2025) (Order Affirming in Part, Reversing in Part, and Remanding) (stating “we generally agree that the use of ‘may’ in a statute is permissive whereas the use of ‘must’ is mandatory”); *see also BMO Harris Bank, N.A. v. Whittemore*, 139 Nev. 274, 278, 535 P.3d 241, 245 (2023) (explaining a method-of-notice requirement was a time and manner provision, “which weigh[ed] in favor of demanding strict compliance”).

As a result, we conclude that East Cactus fails to demonstrate the district court erred by granting summary judgment concerning this claim. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Therefore, East Cactus fails to demonstrate that it is entitled to relief based on this argument.

Unjust enrichment counterclaim

Third, East Cactus challenges the district court’s decision to grant summary judgment in favor of BoNYM as to its claim of unjust enrichment, arguing the voluntary payment doctrine should defeat that claim. However, we conclude East Cactus fails to demonstrate the district court committed error.

“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). 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, exceptions to the voluntary payment doctrine “are (1) coercion or duress caused by a business necessity and (2) payment in defense of property.” *Id.* at 956, 338 P.3d at 1254.

Here, the district court determined that the undisputed facts demonstrated that BoNYM conferred a benefit upon East Cactus as the aforementioned payments BoNYM made allowed it to use the property as a source of income, East Cactus appreciated that benefit and accepted it, and the retention by East Cactus 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 the undisputed facts demonstrated that both the business

necessity exception and the defense of property exception to the voluntary payment doctrine applied because BoNYM was required to make the aforementioned payments to preserve the value of the property and to avoid tax enforcement proceedings.

On appeal, East Cactus does not present cogent argument challenging the district court's determination that the defense of property exception applied in this matter. As a result, East Cactus 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). Moreover, East Cactus does not address the court's decision that the business necessity exception to the voluntary payment doctrine applied, and thus, it has forfeited any argument related to the same. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that arguments not raised on appeal are deemed forfeited). Accordingly, East Cactus does not demonstrate that the district court erred by granting summary judgment in favor of BoNYM concerning its unjust enrichment counterclaim. *See Hung v. Genting Berhad*, 138 Nev. 547, 547, 513 P.3d 1285, 1286 (Ct. App. 2022) (holding that "when a district court provides alternative bases to support its ultimate ruling, and an appellant fails to challenge the validity of each alternative basis on appeal," this court will generally affirm the judgment).

Docket No. 90955-COA

Attorney fees and costs

East Cactus states that it does not independently challenge the district court's award of attorney fees but rather urges this court to reverse that award if it also elects to reverse the order granting summary judgment. Accordingly, because East Cactus presents no other basis to challenge the award of attorney fees, we necessarily conclude that the district court did not abuse its discretion. *See Palmieri*, 131 Nev. at 1033 n.2, 367 P.3d at 446 n.2. Furthermore, East Cactus does not challenge the award with respect to costs, and thus, it has forfeited any argument related to the same. *See id.*

Accordingly, having concluded that East Cactus is not entitled to relief, we

ORDER the judgments of the district court AFFIRMED.¹


Bulla, C.J.


Gibbons, J.


Westbrook, J.

¹Insofar as East Cactus raises 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, we deny BoNYM's request for sanctions under NRAP 38. *See Anaya-Alvarado v. Anaya-Alvarado*, No. 84869-COA, 2023 WL 2033364, at *6 n.8 (Nev. Ct. App. Feb. 15, 2023) (Order of Affirmance) (declining to impose sanctions 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. Timothy C. Williams, District Judge
Dana Jonathon Nitz, Settlement Judge
Akerman LLP/Las Vegas
Atlas Solomon LLP
Hong & Hong
East Cactus 2112 Trust
Eighth District Court Clerk