

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GOLDBERG, KERSHEN & ALTMANN,  
LLC, A DELAWARE LIMITED  
LIABILITY COMPANY,

Appellant,

vs.

CHAD M. KREISER, AN INDIVIDUAL,  
Respondent.

GOLDBERG, KERSHEN & ALTMANN,  
LLC, A DELAWARE LIMITED  
LIABILITY COMPANY,

Appellant,


vs.

CHAD M. KREISER, AN INDIVIDUAL,  
Respondent.

No. 87677-COA

No. 88209-COA  
**FILED**

MAY 22 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART AND REVERSING IN PART (NO. 87677-  
COA) AND REVERSING (NO. 88209-COA)*

In these consolidated appeals, Goldberg, Kershen & Altmann, LLC, challenges district court orders dismissing its second amended complaint and awarding attorney fees as a sanction in an unjust enrichment and declaratory judgment action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge, and Michael Villani, Senior Judge.<sup>1</sup>

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<sup>1</sup>Although Judge Israel entered the orders dismissing the second amended complaint and imposing attorney fees as sanctions, and Senior Judge Villani entered the order setting the amount of attorney fees awarded as sanctions, Judge Nancy L. Allf heard the underlying motions and announced her rulings on the record, as memorialized in minutes setting forth her decision as to each motion.

In June 2008, respondent Chad Kreiser and his wife acquired title to the subject property; however, they later divorced, and Kreiser was awarded the subject property in the divorce decree. By that time, the property had been damaged in a fire and its physical structure was removed from the site leaving only the concrete foundation and a driveway.

Kreiser later experienced a workplace incident that caused a traumatic brain injury. This injury left Kreiser unable to work, permanently disabled, and with some memory and focus impairment. Around this time, Kreiser filed for Chapter 13 bankruptcy. According to Kreiser's undisputed representation, at the conclusion of the bankruptcy proceeding there was confusion as to whether he or the beneficiary of the deed of trust on the property would be paying the property taxes and other expenses for the property after 2016. As a result, after 2016, the property taxes were not paid by Kreiser or the beneficiary for several years.

In May 2022, appellant Goldberg, Kershen & Altmann, LLC (Goldberg), filed a complaint against Kreiser to quiet title to the property under a theory of adverse possession. The two claims listed in the complaint were (1) quiet title (adverse possession) and (2) declaratory judgment (quiet title). To support these claims, Goldberg alleged that it took possession of the property on April 3, 2017; secured it; and maintained actual, continued possession of the premises since that time. Moreover, Goldberg alleged that it "paid for all property taxes during its possession" in the amount of \$2,985.57.

Kreiser sent Goldberg email correspondence and a 21-day safe-harbor letter under NRCP 11, seeking the withdrawal of its complaint on the basis that it could not establish adverse possession under NRS 11.140 and NRS 11.150. Goldberg, in turn, filed its first amended complaint in

which it added an unjust enrichment claim as an alternative to its adverse possession claim. The unjust enrichment claim alleged that Goldberg conferred a benefit on Kreiser by paying property taxes and incurring other expenses to maintain the property; that Kreiser appreciated the benefit since "the property would have been lost to tax sales" if Goldberg did not pay the property taxes; and that, if Kreiser wanted to keep his property, he should reimburse Goldberg for the sums it expended. In response, Kreiser sent a second-safe harbor letter, arguing that the first amended complaint was untimely.

A few weeks later, Kreiser moved to strike the first amended complaint, to dismiss the original complaint with prejudice pursuant to NRCP 12(b)(5), and for sanctions under NRCP 11. Goldberg opposed these motions. Following a hearing, the district court entered an order striking Goldberg's first amended complaint on grounds that the pleading was untimely filed without leave of court in violation of NRCP 15(a). The court also entered an order granting Kreiser's motion to dismiss the original complaint, but granted Goldberg leave to amend and file a new first amended complaint. Lastly, the district court entered an order denying Kreiser's motion for sanctions against Goldberg.

Goldberg filed the operative first amended complaint as permitted by the district court a few months later. In this complaint, Goldberg retained its original allegations of adverse possession and expanded on them by asserting that it secured the property by "a natural enclosure and man-made enclosure" and posted signs on the property. Nevertheless, Goldberg removed the adverse possession claim from its first amended complaint. Its unjust enrichment claim remained the same as in the stricken first amended complaint. But Goldberg modified its

declaratory judgment claim, which was styled as a claim for “Declaratory Judgment (Quiet Title).” In particular, rather than specifically requesting a declaratory judgment quieting title, the claim now requested a declaratory judgment that “the verified factual allegations stated above, provide a sufficient legal basis for reimbursement of the foregoing expenses.” Hence, despite the label of the declaratory judgment claim, the relief Goldberg sought in connection with the claim essentially mirrored the relief that it sought in its unjust enrichment claim.

Krieser’s counsel sent a third safe-harbor letter demanding that Goldberg withdraw its newly filed first amended complaint, arguing the claims therein were entirely without merit since Goldberg had not adversely possessed Kreiser’s property and, therefore, it had voluntarily paid the property taxes and other expenses. Goldberg did not withdraw its first amended complaint, and Kreiser filed a motion to dismiss the pleading with prejudice and an NRCP 11 motion for sanctions. In the motion to dismiss, Kreiser argued that Goldberg paid the property taxes voluntarily, so the voluntary payment doctrine (VPD or doctrine) barred Goldberg’s unjust enrichment claim and it could not prove that an exception to the VPD applied.<sup>2</sup>

In the NRCP 11 motion, Kreiser requested attorney fees and costs as a sanction against Goldberg and its counsel, asserting it filed its first amended complaint “for the improper purpose of coercing Kreiser into signing over his real property interest without a legitimate legal or factual basis.” Kreiser also asserted that Goldberg frivolously maintained its

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<sup>2</sup>Kreiser also moved to dismiss Goldberg’s declaratory relief claim, which the district court granted. Because Goldberg does not challenge the propriety of that decision on appeal, we need not address it further.

unjust enrichment and declaratory judgment claims because it had no legal or factual basis by which to seek recovery.

In its opposition to Kreiser's second motion to dismiss, Goldberg argued that it stated a claim for unjust enrichment because Kreiser, as the sole owner of the property, refused to reimburse it for the property taxes and other expenses it paid. Goldberg also argued the VPD was inapplicable because it only applied when a payor sought to recover a payment from the payee, whereas it was attempting to recover from Kreiser, who was a third-party beneficiary of its payment of the property taxes to the county. Goldberg alternatively argued the defense-of-property exception to the VPD applies since failure to pay the property taxes would have resulted in a tax sale in which the property would be transferred to an unrelated party, so it paid the taxes to avoid the loss of property. Goldberg also opposed Kreiser's second motion for Rule 11 sanctions, arguing that it had acted in good faith.

At the subsequent hearing, Kreiser withdrew his request for sanctions against Goldberg's counsel but maintained it against Goldberg. Additionally, Goldberg represented that it was not seeking an interest in Kreiser's property, notwithstanding the allegations in its first amended complaint and use of the phrase "quiet title" in the heading of its claim for a declaratory judgment.

Subsequently, the district court entered orders granting both of Kreiser's motions. In its dismissal order, the court determined that Goldberg failed to state a claim for unjust enrichment. The district court found that Goldberg failed to cite any controlling authority supporting its argument that the VPD defense only applies to disputes in which a payor seeks to recover a payment from a payee, so the doctrine was available to Kreiser, as the owner of the property and third-party beneficiary of

Goldberg's payment of property taxes. Further, the court found that Goldberg failed to state any plausible exception to the VPD because it did not have an interest in the subject property at the time payments were made, it had abandoned its claim of adverse possession of the property, its payment of back taxes was voluntary, and the payment of taxes was not urgently necessary.

In its order sanctioning Goldberg pursuant to NRCP 11, the district court found that sanctions in the form of attorney fees were appropriate because Goldberg was on notice that its first amended complaint was filed without factual or evidentiary support, and it knew or should have known that no additional investigation or discovery would support its claims. Accordingly, the district court sanctioned Goldberg in an amount equal to Kreiser's attorney fees and costs for defending a frivolous action and directed Kreiser to submit a memorandum of fees and costs. Goldberg appealed the orders granting Kreiser's motion to dismiss and imposing sanctions in Docket No. 87677-COA.

Kreiser subsequently submitted a memorandum requesting \$54,386.07 in attorney fees. Goldberg opposed Kreiser's request,<sup>3</sup> and the court ultimately awarded Kreiser \$45,099.78 in attorney fees as sanctions following an evaluation of the *Brunzell*<sup>4</sup> factors. Goldberg appealed the order setting the amount of attorney fees awarded as sanctions in Docket

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<sup>3</sup>Goldberg also countermoved to compel the production of unredacted billing statements, but the district court denied Goldberg's countermotion, and that denial is not challenged on appeal.

<sup>4</sup>*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

No. 88209-COA. The appeals in Docket No. 87667-COA and 88209-COA were consolidated.

On appeal, Goldberg argues that the district court erred in dismissing its unjust enrichment claim pursuant to NRCP 12(b)(5) and that the district court abused its discretion when it ordered Goldberg to pay Kreiser's attorney fees as a sanction pursuant to NRCP 11. Kreiser disagrees, essentially based on the same reasons he raised before the district court. We address each of Goldberg's issues in turn.

*The district court did not err when it dismissed Goldberg's unjust enrichment claim*

Goldberg argues that its unjust enrichment claim was meritorious because the VPD has only been raised by the recipient of the funds against a payor in Nevada, and the district court impermissibly extended the doctrine to cover Kreiser, a third-party beneficiary. Goldberg further argues that even if the VPD did apply, the defense-of-property exception to the doctrine precluded dismissal of its claim. Goldberg argues the exception precludes dismissal because it did not voluntarily pay the back property taxes but did so to prevent the property from being sold since it had an interest in the property as an adverse possessor at the time of payment.<sup>5</sup> Kreiser responds that the district court properly dismissed Goldberg's unjust enrichment claim, arguing that the VPD applies since Goldberg paid taxes on the property and other expenses voluntarily and

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<sup>5</sup>Although Goldberg omitted its quiet title claim based on a theory of adverse possession from its first amended complaint, it continued to argue that it acquired an interest in the property through adverse possession for purposes of its unjust enrichment claim, albeit an interest that it elected not to pursue in this case, as it explained at the hearing on Kreiser's motion to dismiss the first amended complaint.

could not establish the defense-of-property exception because it did not have an interest in the property to defend.

*Standard of review*

This court reviews an order granting a motion to dismiss for failure to state a claim upon which relief can be granted under NRCP 12(b)(5) de novo. *Brown v. Eddie World, Inc.*, 131 Nev. 150, 152, 348 P.3d 1002, 1003 (2015). In reviewing an order granting a motion to dismiss, we recognize all the factual allegations in the complaint as true and draw all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). This court should only affirm dismissal if it appears that the plaintiff could prove no set of facts, which, if true, would entitle it to relief. *Id.* Additionally, at the pleading stage, the plaintiff is not required to anticipate and negate affirmative defenses and, therefore, the existence of an affirmative defense generally will not support a motion to dismiss. *Quiller v. Barclays Am./Credit, Inc.*, 727 F.2d 1067, 1069 (11th Cir. 1984); *see also Exec. Mgmt., LTD. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) ("Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the [NRCP] are based in large part upon their federal counterparts" (internal quotation marks omitted)). "Nevertheless, a complaint may be dismissed [for failure to state a claim] when its own allegations indicate the existence of an affirmative defense, so long as the defense clearly appears on the face of the complaint." *Quiller*, 727 F.2d at 1069; *see also Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) (explaining that a motion to dismiss is appropriate when an affirmative defense "appears from the complaint itself").



*Kreiser can raise the VPD as a third-party beneficiary in this case*

The VPD “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). If applicable, the VPD bars recovery under a theory of unjust enrichment. 66 Am. Jur. 2d *Restitution and Implied Contracts* § 92 (“A defendant is not unjustly enriched and therefore not required to make restitution where a benefit was conferred by a volunteer.”); see also *Smith v. City of St. Louis*, 409 S.W.3d 404, 419 (Mo. Ct. App. 2013) (recognizing the VPD as a defense to claims for unjust enrichment); *BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 768 (Tex. 2005) (explaining that when a plaintiff sues for restitution claiming a payment constitutes unjust enrichment, a defendant may respond with the VPD as a defense). Before evaluating whether the allegations in Goldberg’s first amended complaint demonstrate that the VPD barred its unjust enrichment claim, we address its assertion that Kreiser cannot raise the doctrine as an affirmative defense because the VPD is only applicable in cases where a payor seeks to recover from a payee and not a third-party beneficiary.

Although Nevada cases addressing the VPD typically involve a payor contesting a payment to a payee, Goldberg’s contention that Nevada law limits the doctrine to only that scenario is unavailing. Indeed, in *JPMorgan Chase Bank v. SFR Investments Pool 1, LLC*, No. 71839, 2018 WL 1448728 at \*2 (Nev. Mar. 15, 2018) (Order of Affirmance), the supreme court confronted a substantively identical issue when a payor challenged the district court’s determination that the VPD precluded it from recovering a payment from the third party it benefited, rather than the payee, under a

theory of unjust enrichment. There, the supreme court looked to *Cobb v. Osman*, 83 Nev. 415, 417-19, 433 P.2d 259, 260-61 (1967), which appeared to consider the VPD where the payor sought to recover the payments from the person it benefited, not the payee. *JPMorgan*, No. 71839, 2018 WL 1448728 at \*2. And because the payor in *JPMorgan* did not point to any legal authority to support limiting the VPD to the payor-payee context, the supreme court declined to do so. *Id.*

In the present case, just as in *JPMorgan*, Goldberg has not pointed to any legal authority to support limiting the VPD to the payor-payee context. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues when they are unsupported by cogent argument and citation to relevant legal authority). Consequently, Goldberg fails to demonstrate that the district court erred by concluding that the VPD could apply here.

*The allegations in Goldberg's first amended complaint demonstrate that the VPD bars its unjust enrichment claim*

We next consider whether the allegations in Goldberg's first amended complaint demonstrate that the VPD applied. The VPD applies when a person willingly "pay[s] a bill without protest as to its correctness or legality." *Nev. Ass'n Servs.*, 130 Nev. at 954, 338 P.3d at 1253 (internal quotation marks and emphasis omitted). Thus, a party who makes a tax payment without protest that the underlying demand for payment was incorrect or illegal, despite having full knowledge of all the facts surrounding the payment, is not permitted to recover that payment on grounds that the party was under no legal obligation to make it. *Id.*

Here, Goldberg's first amended complaint addressed its payment of property taxes in the context of various allegations concerning its efforts to adversely possess the subject property. In particular, Goldberg

alleged that it "paid for all property taxes during [its period of adverse] possession." Goldberg also alleged that Kreiser appreciated a benefit from its payment of the property taxes since, if it had not done so, "the property would have been lost to tax sales." Reading these allegations together, Goldberg's first amended complaint shows that it willingly paid the property taxes in an effort to adversely possess the property, as required to acquire a vested interest in the property. See NRS 11.150 (providing that adverse possession is not established unless the adverse possessor occupies and claims the property at issue for five years, continuously, and pays all taxes levied and assessed against the property during that period). But the fact that Goldberg made the tax payments under such circumstances does not demonstrate that the payments were involuntary despite its arguments to that effect. To the contrary, the decision to pursue an interest in the subject property through adverse possession, including by paying the relevant property taxes, was a voluntary one that Goldberg made for its own benefit. In doing so, it assumed the risk that its efforts to adversely possess the property would be unsuccessful, such that the tax payments it made might be forfeited.

Moreover, these allegations indicate that Goldberg paid the property taxes without protesting their correctness or legality under the belief that they had been validly assessed against the subject property during its alleged period of adverse possession. Indeed, by alleging that "it paid for all property taxes during its [period of adverse] possession," Goldberg was attempting to satisfy Nevada's notice pleading requirement by showing that it "paid all taxes, state, county and municipal, which may have been levied and assessed against the land for the period mentioned," as required by NRS 11.150. See *W. States Constr., Inc. v. Michoff*, 108 Nev.

931, 936, 840 P.2d 1220, 1223 (1992) (explaining that Nevada is a notice-pleading state); *cf. Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (explaining that in evaluating whether a complaint states a claim for which relief may be granted, courts must consider whether “the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief” (internal quotation marks omitted)). And Goldberg’s belief that the property taxes had been validly levied and assessed is plainly demonstrated by its allegation that Kreiser would have lost the property to tax sales if it had not paid the property taxes.

Thus, given that Goldberg’s first amended complaint demonstrates that it voluntarily paid the property taxes without protest as to their correctness or legality, the VPD bars its unjust enrichment claim unless an exception to the doctrine applies.

*Goldberg has not demonstrated that any exception to the VPD applies and, therefore, the district court properly dismissed Goldberg’s unjust enrichment claim*

Nevada law has recognized two exceptions to the VPD: (1) coercion or duress caused by a business necessity and (2) payment in defense of property. *Nev. Ass’n Servs.*, 130 Nev. at 956, 338 P.3d at 1254. We solely focus on the second exception here as Goldberg told the district court below that it was not arguing that it made the tax payments under business duress.<sup>6</sup> *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623

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<sup>6</sup>Additionally, none of the allegations in Goldberg’s first amended complaint suggest that the business-duress exception could apply. *See Sanchez v. Time Warner, Inc.*, No. 98-211-CIV-T-26A, 1999 WL 1338446, at \*1-2 (M.D. Fla. Sept. 27, 1999) (reasoning that the plaintiffs complaint could properly be dismissed for failure to state a claim since the pleading showed on its face that the VPD applied and did not include any allegations

P.2d 981, 983 (1981) (explaining that issues not argued below are generally “deemed to have been waived and will not be considered on appeal”).

Under the defense-of-property exception, the payor is not treated as a volunteer for purposes of the VPD when the payment at issue is made to save the payor’s interest in property. *See Cobb*, 83 Nev. at 421, 433 P.2d at 263 (“It is well settled that one is not a volunteer or stranger when he pays to save his interest in his property.”). The Nevada Supreme Court has applied this exception when a payor made a payment to protect a vested interest in property. *Id.* at 420-21, 433 P.2d at 262-63 (concluding that the district court improperly concluded that the payors were volunteers who could not recover the payment at issue since they made it to preclude the foreclosure of two properties that they owned). However, Nevada’s appellate courts have never applied the defense-of-property exception in the adverse possession context, where a party pays property taxes as one of the necessary steps to acquire a vested interest in the property, rather than to protect a property interest that has already vested. *See NRS 11.150; Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262, 265 (1979) (providing that a vested interest in property arises when “adverse possession ha[s] been effected and successfully completed”).

Having considered the propriety of permitting adverse possessors to assert the defense-of-property exception to the VPD so that they may proceed with claims to recover funds expended in connection with their efforts to adversely possess property, we decline to extend the exception to allow such claims because of the concerning policy implications of doing so. Allowing the exception in such circumstances would create a

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to establish a “conceivable claim of coercion [or] duress . . . warranting an exception to the [VPD]”).

perverse incentive by permitting adverse possessors to externalize the costs they incur in attempting to adversely possess a property to the property owner when their efforts are unsuccessful. As a matter of public policy, individuals or entities that wish to adversely possess another's property should bear the risk of any such payments.

Because the allegations in Goldberg's first amended complaint showed that Goldberg made tax payments to adversely possess the property, and because the defense-of-property exception does not apply to claims of adverse possession, the complaint on its face showed that this exception to the VPD did not apply to Goldberg's payment. *See Quiller*, 727 F.2d at 1069; *Kellar*, 87 Nev. at 491, 489 P.2d at 92. Thus, the district court properly dismissed Goldberg's unjust enrichment claim as barred by the VPD, and we affirm the district court's dismissal of the claim in Docket No. 87677-COA.

*The district court abused its discretion when it imposed NRCP 11 sanctions on Goldberg in the form of attorney fees*

Goldberg argues that the district court abused its discretion in imposing NRCP 11 sanctions against it because its claims were not groundless, and the district court made no findings that they were. Kreiser argues that the court made sufficient findings and there is ample evidence in the record to support that Goldberg was on notice that the allegations in its second amended complaint were unfounded.

We review orders awarding attorney fees as sanctions for an abuse of discretion. *Watson Rounds v. Eighth Jud. Dist. Ct.*, 131 Nev. 783, 787, 358 P.3d 228, 231 (2015). Under NRCP 11(b), when an attorney or unrepresented party presents a pleading to the court, "whether by signing, filing, submitting, or later advocating it," they "certif[y] that to the best of the person's knowledge, information, and belief, formed after an inquiry

reasonable under the circumstances,” the pleading meets various requirements. Specifically, as relevant to this appeal, an attorney or unrepresented party who presents a pleading certifies that “it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation” and that “the claims [therein] are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” NRCP 11(b)(1), (2). When a pleading is filed for an improper purpose or is frivolous, the district court “may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.” NRCP 11(c); see *Lamont’s Wild W. Buffalo, LLC v. Terry*, 140 Nev., Adv. Op. 11, 544 P.3d 248, 251 (2024). “[I]f imposed on motion and warranted for effective deterrence” the district court may award attorney fees as sanctions, provided that they “directly result[ ] from the violation” at issue. NRCP 11(c)(4).

As a preliminary matter, the district court awarded attorney fees against Goldberg for bringing frivolous claims for both unjust enrichment and a declaratory judgment that Goldberg was entitled to reimbursement of the expenses identified in the unjust enrichment portion of the complaint.<sup>7</sup> However, both claims sought the same relief—

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<sup>7</sup>Insofar as the district court concluded that Goldberg’s first amended complaint set forth two frivolous claims for declaratory relief—the claim referenced above and a separate claim based on a theory of adverse possession—its conclusion is unsupported by the record. Unlike its original complaint, Goldberg did not include any cause of action in its first amended complaint in which it sought an interest in the subject property based on a theory of adverse possession. While we recognize that Goldberg’s claims were numbered in a manner suggesting that it was asserting three claims and that the label of Goldberg’s claim for a declaratory relief claim included

specifically, reimbursement of the property taxes and other expenses that Goldberg paid in connection with the other property. And they were based on the same legal theory that it would be inequitable for Kreiser to retain the benefit that Goldberg conferred by paying the property taxes and other expenses. Thus, we consider these claims together when reviewing the district court's sanction.

The viability of Goldberg's claims for unjust enrichment and declaratory relief turned entirely on the applicability of the VPD. Goldberg did not specifically address the VPD in its first amended complaint, *Nev. Ass'n Servs. Inc.*, 130 Nev. at 952, 338 P.3d at 1252, but this does not mean that its claims for unjust enrichment and declaratory relief were brought for an improper purpose or without a nonfrivolous argument for modifying existing law or establishing new law.

Although Kreiser eventually raised the VPD in its motion to dismiss the first amended complaint, there was an open question of law regarding whether the doctrine would apply under the facts and circumstance of the case. As detailed, in *JPMorgan*, 2018 WL 1448728 at \*2, the supreme court observed that it had appeared to consider the VPD in the third-party beneficiary context in *Cobb*, 83 Nev. at 417-19, 433 P.2d at 260-61, but did not definitively hold whether the VPD was limited to payor-payee disputes. Moreover, Goldberg's argument that it could rely on the defense-of-property exception to the VPD presented a novel question of law,

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the phrase "quiet title," we accept its representations on appeal that the claims were misnumbered and that "quiet title" was inadvertently added in the title of its claim for declaratory relief. Moreover, during the hearing on Kreiser's motion to dismiss, Goldberg clarified that it had abandoned its adverse possession claim and was not seeking an interest in the subject property.



as Nevada's appellate courts have not previously addressed whether the exception is available in the adverse possession context. As a result, in presenting its claims for unjust enrichment and declaratory relief, asserting that the VPD should be limited to the payor-payee context, and arguing that it could rely on the defense-of-property exception, Goldberg had nonfrivolous arguments for modifying existing law or establishing new law. Therefore, Goldberg's conduct did not rise to a level warranting sanctions under NRCP 11, and the district court abused its discretion by imposing an award of attorney fees as sanctions against Goldberg. Accordingly, in Docket No. 87677-COA, we reverse the order imposing an award of attorney fees as sanctions against Goldberg, and in Docket No. 88209-COA, we reverse the order setting the amount of attorney fees awarded as sanctions.

It is so ORDERED.<sup>8</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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<sup>8</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for further relief.

cc: Hon. Ronald J. Israel, District Judge  
Hon. Michael Villani, Senior Judge  
Origins Legal Group, LLC  
Serrano Law Group, PLLC  
Eighth District Court Clerk