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FILED

APR 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa Allen*
DEPUTY CLERK

Appellant

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Case No. 85821-COA

Clark County District Court

Case No. A-21-850526-C

(consolidated with A-20-826568-C

WESLEY RUSCH, an individual, and OLIVER LONGBOY, an individual,

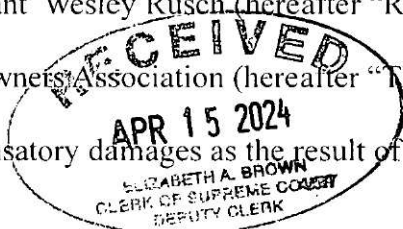
Plaintiffs,

vs.

MOTION FOR JUDGMENT
ON THE PLEADINGS

THE MARTIN CONDOMINIUM UNIT OWNERS
ASSOCIATION a ' ASSOCIATION, a domestic
non-profit corporation; DOE Individuals I
through X; and ROE Corporations and
Organizations I through X,
Defendants.

Appellant Wesley Rusch (hereafter "Rusch") has filed a civil action against The Martin Condominium Unit Owners Association (hereafter "The Martin") for breach of written contract (CCRS) for compensatory damages as the result of their wrongful and illegal actions.



24-13105

This case should never have lasted as long as it has. It is an open and shut case. The Martin let the water from the pipe leak run for over three hours causing damage to Rusch's home and forcing him to relocate for over three months while repairs for made to his unit. Then the Martin said their insurance company would pay for the damages sustained. But instead the insurance company blamed it on the pipe. That was not the cause of Rusch's damages but rather the fact that the Martin let the water run down the hall for over three hours.

Then Red Rock sold Rusch's home without complying with Nevada Law. They did not provide any notice whatsoever or demand letter. Since Red Rock failed to follow the legally required procedures the sale of Rusch's condo is null and void.

It is time for this court to restore Rusch to his original position in his home and compensate him for the damages he has sustained as a result of the wrongful actions of the Martin.

Rusch is tired of being homeless moving from hotel to hotel and wants to live in a home.

The Martin has failed to ANSWER complaint drafted, filed and served on the Martin by Rusch. By their failure to respond they have admitted they are at fault.

NRCP Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) **In General.** Unless another time is specified by Rule 4.2(c)(3)(E), this rule, or a statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint;

Default Judgment: One possible outcome of the plaintiff's failure to respond is that the defendant may request a default judgment from the court. A default judgment is a decision in favor of the defendant due to the plaintiff's failure to take any action or present a valid defense. Essentially, it means that the court accepts the defendant's version of events as true and awards them the relief they requested in their answer.

In a civil case, when a plaintiff files a complaint against a defendant, it is essential for the defendant to respond by filing an answer within a specified time frame. This answer allows the defendant to present their defenses and arguments against the claims made by the plaintiff. However, what happens if the plaintiff fails to respond to the defendant's answer? Let's explore this situation and understand the potential outcome.

1. **Default Judgment:** When a defendant fails to respond to the plaintiff's complaint, the plaintiff can request a default judgment from the court. A default judgment is a court order that grants judgment in favor of the plaintiff because of the defendant's failure to answer or defend the case. This means that if the defendant does not respond, they effectively lose the case.

2. **Damages and Relief:** Once a default judgment is entered, the court will determine the damages and relief to be awarded to the plaintiff. The damages could be monetary compensation for any losses suffered by the plaintiff. Additionally, the court may grant other forms of relief, such as an injunction or specific performance, depending on the nature of the case.

Rusch hereby rerequests that a default judgment be entered against the Martin.

The Written Contract

Plaintiffs, as the owners of the Subject Property, entered into an agreement with the Martin in the form of a document entitled Covenants, Conditions and Restrictions ("CC&Rs")

FIRST AND SECOND CLAIMS

Pursuant to the CC&Rs, Martin was under an obligation to maintain the common areas surrounding the Subject Property.

Plaintiffs performed their obligations under the CC&Rs.

Martin materially breached its CC&Rs as it failed to address the issues stemming from the flood.

Due to Martins breach of their obligations under the CC&Rs described herein, That on or about June 29, a water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran throughout the entire floor where the Subject Property was located. The Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either turn off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs personal property. Furthermore, **The damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

Plaintiffs have been damaged in an
amount of \$25,552.92

The Third Claim is for illegal sale of home in violation of Nevada Law and CCR 17.2

The **Martin HOA's agent Red Rock did not comply with NRS 116.31162 et seq** and CCR 17.2 when they sold Rusch's home

The sale of Rusch's condo was in violation of Nevada Law. Red Rock Martin' agent was required to comply with Nevada Law

The **Martin HOA did not comply with NRS 116.31162 et seq** and CCR 17.2 when it sold the property,

Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states:

the **amount of the assessments and other sums that are due** a description of the unit against which the lien is imposed, and the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

NRS 116.31162 specifically provides that: Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

Except as otherwise provided in subsection 4, in a condominium, in a planned community, in provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the **association may foreclose its lien by sale after all of the following occur:**

(a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) **Not less than 30 days after mailing the notice of delinquent assessment** pursuant to paragraph (a), the association or other person conducting the sale **has executed and caused to be recorded, with the county recorder of the county** *The Martin failed to do this* in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community;

or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

(Added to NRS by 1991, 569; A 1993, 2371; 1997, 3121; 1999, 3011; 2003, 2244, 2273; 2005,

2608) **THE MARTIN FAILED TO COMPLY WITH ANY OF THE ABOVE PROCEDURES THERE FORE THE SALE OF RUSCH'S HOME IS NULL AND VOID.**

That as a direct and proximate result of the Defendant's in actions Plaintiffs have been damaged in the amount of \$ Eight Million Dollars

ACCORDINGLY RUSCH'S COMPLAINT IS FOR COMPENSATION

ANALYSIS OF THE CLAIM

The Martin had No excuse for letting water run for over three hours forcing Rusch to relocate for over the months while repairs for made.

The Martin gave No Notice of the August 10 Sale as required by Nevada Law resulting in Rusch's wrongful eviction forcing Rusch to live in a hotel for years.

**Rusch did not receive any written or oral notice of a proposed sale of his property .
Rusch first learned of the sale by a call from an attorney's office. Therefore the sale
was illegal and must be reversed.**

**The sale of Rusch's condo was in violation of Nevada Law. Red Rock was required to comply with
Nevada Law and they did not therefore the sale is invalid and the sale must be reversed and Rusch must
be returned to his condo. Therefore the possession of the Martin condo must be restored to Rusch
and Longboy immediately**

**Rusch and Longboy should be compensated for the time they have been
homeless and forced to stay in hotels since their wrongful eviction.**

STRICT SCRUTINY IS REQUIRED

Nevada Courts Require Strict Statutory Compliance to Lien and Foreclosure

**It is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies),
including adopting and following collection policies, in pursuing collection activities authorized under the Act.**

Because of the technical nature of the Act and the courts' apparent deference to err in
favor of due process protections for HOA owners (not too dissimilar from the
protections typically afforded to California tenants in unlawful detainer
proceedings), the Act is fertile ground for mistakes. **These recent cases make
clear that even minor or technical violations can invalidate the lien and
foreclosure process.**

**THEREFORE SINCE THE MARTIN HAS NO DEFENSE TO CLAIMS
STATED IN RUSCH'S COMPAINIT THE COURT IS REQUIRED TO
AWARD RUSCH JUDGMENT**

The court failed to rule on the legality of the sale. The sale of Plaintiff's condo was in violation on the Martins CCRs, Nevada Law and the Constitutional Right of Due process of law. Plaintiff's have been homeless ever since moving from hotel to hotel during a pandemic and need to be compensated for their damages.

The court needs to rule that the sale was void and award Plaintiff Damages.

Damages

Is is hereby requested that this court order The Martin to pay Rusch

\$8,025,552.92

and advise the Clark County Recorder's Office the Deed 20171017001011 filed by

Red Rock on transferring Rusch to Hollyvale is Null and Void

Respectfully Submitted



s/s Wesley Rusch

Wesley Rusch

Declaration of Wesley A Rusch

Declarant has personal knowledge of the following and being deposed and sworn states under penalty of perjury under the Laws of the State of Nevada, as follow:

I am over the age of Eighteen.

That myself and Oliver B Longboy, are the two individuals who purchased the real property commonly known as 4471 Dean Martin, Apt 2206, Las Vegas NV 89103.

We own no other property and have no other place to live.

Hollyvale Rental Holdings, LLC is based on information and belief an entity that speculates in real estate. They are not a real person and do not need a place to live.

On the other hand Rusch and Longboy are two individuals who are two real people who need a place to live.

Neither Rusch or Longboy received any notice of any proposed or ported auction of their property for August 10, 2017. Red Rock as agent for the Martin violated Nevada law by selling their property without complying with Nevada law. The sale therefore must be voided and rescinded and the property returned to its rightful owners Rusch and Longboy. Our real property was sold at auction purportedly for delinquent HOA fees on August 10, 2017. When in fact the Martin owed Rusch more than the HOA fees. On about June 29 a sprinkler pipe broke in the unit at the end of the 22nd floor causing water to flow down the hallway and into Rusch's unit.. According to Nigro there was water in Rusch's walls that had to be replaced. The Martin failed to mitigate the damage by not opening the sliding glass door to allow the water to flow down the side of the building instead of down the hall. The Martin also let the water flow for several hours before turning off the water. Had the Martin done either of the foregoing Rusch's Condo would not have suffered damage. As a consequence, Rusch was required to relocate for nearly four months while Nigro repaired his unit. Nigro did not even complete the job and Rusch had to hire his own contractor to complete the job. Rusch incurred expenses in excess of \$25,000 as a result thereof. Rusch therefore claims that amount as an offset to his HOA fees and therefore does not owe the Martin any money and in fact the Martin owes Rusch money.

That neither myself nor Oliver B Longboy had received any notice of the HOA sale of our real property.

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

WESLEY A RUSCH



Proof of service

Proof of Service

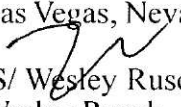
Wesley Rusch being duly sworn and deposed and say that at all times herein affiant was and is a citizen of the United States and over 18 years of age

On April 6, 2024 I served attached document to the following address

MARC S. CWIK, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118


/s/ Wesley Rusch
Wesley Rusch