

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CARRINGTON MORTGAGE  
HOLDINGS, LLC,

Appellant,

v.

R VENTURES VIII, LLC, A NEVADA  
SERIES LIMITED LIABILITY  
COMPANY OF THE CONTAINER  
R VENTURES, LLC UNDER NRS  
86.296,

Respondent.

Electronically Filed  
Supreme Court Case No. 71437  
District Court Case No. A-13-684151  
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Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court  
The Honorable ELISSA CADISH, District Judge  
District Court Case No. A-13-684151-C

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**REPLY BRIEF**

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ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
NATALIE L. WINSLOW, ESQ.  
Nevada Bar No. 12125  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000

*Attorneys for Appellant*

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## **INTRODUCTION**

R Ventures is not entitled to the award it received under NRS 116.3116 as a matter of law. This conclusion is inescapable as expanded in the opening brief and under the recent unpublished decision from this Court. *See R Ventures I, LLC v. Wells Fargo Bank, N.A.*, 393 P.3d 660 (Nev. 2017) (unpublished).

R Ventures' answering brief ignores Carrington's arguments and legal authorities—opting instead to contend the applicable statute can be interpreted in its favor, claiming it is the prevailing party entitled to a fee award. The Court should reverse the district court's decision.

## **ARGUMENT**

### **I. NRS 116.3116 *et seq.* Solely Contemplates an Action Brought by an HOA to Recover Assessments Due under an HOA Assessment Lien.**

Despite R Ventures' contrary arguments (Ans. Br. 2-4), the Legislature's references to the term "action" in NRS 116.3116, all address an action by the HOA to enforce its lien. *See* NRS 116.3116(2); NRS 116.3116(7); NRS 116.3116(11); NRS 116.3116(8). The very title of NRS 116.3116 makes clear that an "action" is related to "Liens against units for assessments."

This action cannot be considered an "action" under NRS 116.3116 because R Ventures is not an HOA, and the litigation is not related to any lien by R Ventures for delinquent assessments. R Ventures cannot benefit from NRS

116.3116(8) when R Ventures—a non-HOA—has not instituted an action under NRS 116.3116.

This Court's recent unpublished decision leaves no doubt. *See R Ventures I, LLC* 393 P.3d at 660 (although the purchaser's quiet title action relied on the super-priority lien provision in NRS 116.3116, the statute "did not authorize appellant's action, meaning the action necessarily was not brought under that statute."). The *R Ventures* decision is on all fours—the fact pattern is identical to this case in all respects save one—there, the District Court denied the purchaser's motion for fees. The same reasoning employed in *R Ventures* applies to this case. The instant quiet-title action was not "brought under" that provision. The district court's contrary finding was in error. *Accord Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 373 P.3d 66, 74 n.4 (Nev. 2016).

## **II. R Ventures is Not Entitled to Fees under NRS 116.3116.**

As discussed above and in the opening brief, NRS 116.3116(8) only provides for attorneys' fees to prevailing parties "in action[s] brought under [NRS 116.3116]." R Ventures' quiet title action as purchaser of a property at an HOA foreclosure sale does not qualify. R Ventures ignores the law on this issue and does not even attempt to argue for an implied right of action. The fee award cannot stand.

R Ventures brought claims for relief against Carrington for quiet title/declaratory relief and injunctive relief with the goal of obtaining title to the property free and clear of any and all encumbrances, and preventing Carrington from exercising any remedies under the senior deed of trust. Neither claim was brought under NRS 116.3116—the claims were made pursuant to NRS 30.010 and NRS 40.010, which do not provide for the award of attorneys' fees and costs.

Indeed, NRS 116.3116 does not provide for or reference any sort of "damages," "cause of action," or "attorneys' fees" for third-party purchasers against anyone—much less senior deed of trust beneficiaries. *See, e.g., Chase v. United Residential Mortgage, LLC*, No. 3:10-cv-00365-RCJ-RAM, 2011 WL 198008 (D. Nev. Jan. 19, 2011) (holding that a statute does not create a private right of action without these or similar words).

To maintain an action under NRS 116.3116(8) R Ventures would have to establish a private right of action can be implied. *See Baldonado v. Wynn Las Vegas*, 194 P.3d 96, 100-01 (Nev. 2008). But R Ventures' answering brief makes no argument for an implied right of action. (Ans. Br. 2-5.) R Ventures is not entitled to an award of attorneys' fees and costs under the statute.

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### **III. R Ventures is not entitled to an award of fees as a prevailing party.**

R Ventures argues it is entitled to attorney's fees as the prevailing party. (Ans. Br. 4). NRS 18.010(2)(a) allows for an award of attorney's fees to a prevailing party when the prevailing party "has not recovered more than \$20,000." "[A]n award of a money judgment is a prerequisite to an award of attorney's fees" under NRS 18.010(2)(a). *Key Bank of Alaska v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 385 (Nev. 1990) (citation omitted); *Woods v. Label Inv. Corp.*, 812 P.2d 1293, 1299 (Nev. 1991) (citation omitted). Here, R Ventures is not entitled to an award of attorney's fees under NRS 18.010, because it did not receive a monetary judgment. JA0549-553.

### **CONCLUSION**

For all of the above reasons, this Court should reverse the district court's judgment.

DATED this 11<sup>th</sup> day of August, 2017.

**AKERMAN LLP**

/s/ Tenesa S. Scaturro

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

TENESA SCATURRO, ESQ.

Nevada Bar No. 12488

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Appellant*

*Carrington Mortgage Holdings, LLC*

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this opening brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this reply brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 1456 words.

FINALLY, I CERTIFY that I have read this **REPLY BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answering brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

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. . .



I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 11<sup>th</sup> day of August, 2017.

**AKERMAN LLP**

/s/Tenesa S. Scaturro

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

TENESA SCATURRO, ESQ.

Nevada Bar No. 12488

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Respondent*

*Carrington Mortgage Holdings, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 11, 2017, I served a true and correct copy of the foregoing **REPLY BRIEF**, via this Court's Electronic Filing System to the following:

J. Charles Coons, Esq.  
Thomas A. Miskey, Esq.  
COOPER COONS, LTD.  
10655 Park Run Drive, Suite 130  
Las Vegas, Nevada 89144

*Attorney for Respondent*

/s/Jill Sallade  
An employee of AKERMAN LLP