

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC SERIES 9720
HITCHING RAIL, A NEVADA
LIMITED LIABILITY COMPANY,

Appellant,

vs.

PECCOLE RANCH COMMUNITY
ASSOCIATION; AND NEVADA
ASSOCIATION SERVICES,

Respondents.

Supreme Court Case No. 81446

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APPELLANT'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Law firms that have appeared for Saticoy Bay, LLC, Series 9720 Hitching Rail (“Saticoy”): Roger P. Croteau & Associates, Ltd.

2. Parent corporations/entities: Appellant is a Nevada series limited liability company. Appellant’s Manager is Bay Harbor Trust, with Iyad Haddad as the trustee of the Bay Harbor Trust. No publicly held corporation owns 10% or more of the beneficial interest in the Appellant and/or the Bay Harbor Trust.

Dated this March 15, 2021

ROGER P. CROTEAU & ASSOCIATES, LTD.

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I. TABLE OF AUTHORITIES

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II. LEGAL ARGUMENT

A. THE ORDER OF DISMISSAL WAS A FINAL JUDGMENT

Respondent contends that the Order of Dismissal was not a final judgment, because the district court stated “the case could be filed again” as the matter was dismissed without prejudice. Answering Brief (“AB”) page 1-3. The only case Respondent cites for this proposition is *Alper v. Posin*, 77 Nev. 328, 363 P.2d 502 (1961). The *Alper* decision concerned an appeal from a motion confirming a sale in a business dissolution matter. *Id.* the *Alper* court considered such a decision interlocutory in nature, and thus not subject to an appeal, as there remained other issues for the trial court to resolve. *Id.* The *Alper* court in turn cited *Hurley v. Universal Clay Co.*, 278 Mo. 408, 213 S.W. 28 (1919) to note that an aggrieved party could not appeal an interlocutory order. In both *Alper* and *Hurley* there remained ongoing issues for the trial court to address in an ongoing matter.

In this matter, the trial court dismissed the complaint. To obtain a decision to the claims brought by Saticoy, Saticoy will need to file a new complaint, obtaining a new case number, serve the new complaint, and proceed with all of the requirements for a new matter. While the district court dismissed the matter without prejudice, such that a new complaint may be brought without suffering from *res judicata* challenges, there can be no challenge that the district court concluded the

litigation with nothing further to be decided by the trial court.

Respondent sets forth no other case law supporting their contention that a motion to dismiss is not an appealable final judgment. Dismissing a matter does resolve that matter, though perhaps not the underlying question, in its entirety, such that the decision is appealable under NRAP 3(a)(1). Thus, this matter is properly before this Court on appeal.

B. THE HOA’S ANALYSIS OF THE CC&RS IS SO OVERBROAD AS TO MAKE EVERY CLAIM AGAINST AN HOA AN “INTERPRETATION” OF THE CC&RS.

The HOA’s arguments pertaining to the “requirement” of an interpretation of the CC&Rs suffers from its over inclusivity regarding NRS 38.310(1)(a). While the HOA notes that the statute was meant to be “sweeping” regarding the actions that could be brought, the breadth that the HOA seeks to infer is truly all-encompassing. Indeed, in *McKnight Family, LLP v. Adept Mgmt.*, 310 P.3d 555 (Nev. 2013), the Court noted that “an action is exempt from the NRS 38.310 requirements if the action relates to an individual’s right to possess his or her property.” *Id* at 558. *McKnight* stated that in *Hamm* the Court “determined that a threat of foreclosure constitutes a danger of irreparable harm because the land is unique.” *McKnight* at 558 (citing *Hamm v. Arrowcreek Homeowner’s Assn*, 124 Nev. 290, 297(2008)). Thus, there are matters concerning title to Property which are not subject to the “sweeping”

statutory language which the HOA presents in the Answering Brief (“AB”).

Likewise, McKnight draws a distinction between a challenge to the authority to foreclose, and the foreclosure itself, finding that a wrongful foreclosure claim, which challenged the authority to conduct the foreclosure, was subject to NRS 38.310. *McKnight* at 559. In this matter, Saticoy does not contest the authority to conduct a foreclosure, but whether the foreclosure violated the mandates of NRS 116.1113 and NRS 113.130, and the common law, to determine if the HOA Trustee, as agent for the HOA, had a duty to disclose to third-party bidders at the HOA Foreclosure Sale the “tender” of the Super Priority Lien Amount and/or Attempted Payment to the HOA Trustee. As set forth in the Opening Brief, these causes of action apply to the HOA Trustee as well as the HOA, and go to the foreclosure, as opposed to the authority to foreclose, as set forth by the *McKnight* decision.

Saticoy does not contest if the “HOA must have had the power to authorize assessments, liens, and to enforce the liens themselves” as set forth by the HOA. AB page 7. Saticoy clearly sets forth that Saticoy’s challenge is premised upon NRS 116.1113 and NRS 113.130, and the failure by the HOA Trustee to disclose the tender. Saticoy does not contend that the HOA did not have the power to issue a superpriority lien, as set forth by the HOA detailing the existence of limited-purpose associations. AB page 7-8. Saticoy does not contend that this is a matter relating to

the title to the real property, and thus does not rely upon the McKnight exclusion, nor to the exception under NRS 38.300(3). Instead, Saticoy contends that the HOA, and HOA Trustee, breached NRS 116.1113 and NRS 113.130 by failing to disclose the tender prior to the sale, at a time when Saticoy was not the owner of the property. While Saticoy does seek monetary damages, it does so more as an outside party, not being a homeowner and subject to the CC&Rs at the time of the foreclosure sale.

This matter, despite the HOA's arguments to the contrary, is premised upon the negligence and misrepresentation that occurred by the HOA and HOA Trustee prior to Saticoy becoming a homeowner within the community, and thus does not require a review of the CC&Rs. Indeed, even if the CC&Rs were reviewed by the Court, they cannot overcome the statutory requirements. Indeed, in *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, Ltd. Liab. Co.*, 132 Nev. 362, 371, 373 P.3d 66, 72 (2016), this Court specifically found that CC&Rs can be superseded by NRS 116.3116. Here, Saticoy does not argue that the CC&Rs are superseded by NRS 116.1113 and NRS 113.130, but that the HOA Trustee and the HOA violated NRS 116.1113 and NRS 113.130. No interpretation of the CC&Rs is necessary or even appropriate, the CC&Rs cannot supersede the relevant statutes, and the HOA and HOA Trustee violated the statutes.

III. CONCLUSION

Based upon the foregoing, the district court committed reversible error in multiple ways. Appellant respectfully requests that this Honorable Court reverse the order granting the HOA the HOA Trustee's Motion to Dismiss.

Dated this March 15, 2021.

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IV. ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. 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:

[a.] This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in Times New Roman font size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is

[a.] Proportionately spaced, has a typeface of 14 points or more, and contains 1,047 words; or

[b.] does not exceed 30 pages.

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3. Finally, I hereby certify that I have read this 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 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 and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this March 15, 2021.

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CERTIFICATE OF SERVICE

In accordance with NRAP 25, I hereby certify that on March 15, 2021, I caused a copy of **Appellant's Reply Brief** to be filed and served electronically via the Court's E-Flex System to the following:

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