

**IN THE SUPREME COURT OF NEVADA**

DAISY TRUST, a Nevada trust,

Appellant,

vs.

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, a  
domestic Nevada non-profit  
corporation,

Respondent.

Supreme Court Case No. 83404

Consolidated with

Supreme Court Case No. 84037

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Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX**

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**COMP**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,  
Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, a domestic  
non-profit corporation,  
Defendants

Case No. **A-19-789674-C**  
Dept. No. Department 14

**COMPLAINT**

COMES NOW, Plaintiff Daisy Trust, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Daisy Trust, ("Trust") is a Nevada trust, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Resources Group, LLC, a Nevada limited liability company, as Trustee for the Trust, is authorized to do business and is doing business in the County of Clark, State of Nevada.
3. Daisy Trust is the current owner of real property located at 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) (the "Property").

- 1 4. Daisy Trust acquired title to Property by Foreclosure Deed dated September 11 2012, by and  
2 through a homeowners association lien foreclosure sale on September 5, 2012 (“*HOA*  
3 *Foreclosure Sale*”), conducted by Alessi & Koenig, LLC, a domestic limited liability  
4 company, authorized to do business and doing business in Clark County, State of Nevada, at  
5 the time of the HOA Foreclosure Sale, but as of the filing of this Complaint, the entity is  
6 “dissolved” (“*HOA Trustee*”), on behalf of El Capitan Ranch Landscape Maintenance  
7 Association, a Nevada domestic non-profit corporation (“*HOA*”).
- 8 5. Upon information and belief, HOA is a Nevada common interest community association or  
9 unit owners’ association as defined in NRS 116.011, is organized and existing under the laws  
10 of the State of Nevada, and transacts business in the State of Nevada.
- 11 6. Upon information and belief, HOA Trustee is a debt collection agency doing business in the  
12 State of Nevada, and is organized and existing under the laws of the State of Nevada.
- 13 7. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
- 14 8. The exercise of jurisdiction by this Court over the parties in this civil action is proper  
15 pursuant to NRS 14.065.

16 **GENERAL ALLEGATIONS**

- 17 9. Under Nevada law, homeowner’s associations have the right to charge property owners  
18 residing within the community assessments to cover the homeowner’s associations’ expenses  
19 for maintaining or improving the community, among other things.
- 20 10. When the assessments are not paid, the homeowner’s association may impose a lien against  
21 real property which it governs and thereafter foreclose on such lien.
- 22 11. NRS 116.3116 makes a homeowner’s association’s lien for assessments junior to a first deed  
23 of trust beneficiary’s secured interest in the property, with one limited exception; a  
24 homeowner’s association’s lien is senior to a deed of trust beneficiary’s secured interest “to  
25 the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312  
26 and to the extent of the assessments for common expenses based on the periodic budget

27 ///

28 ///

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the  
2 absence of acceleration during the 9 months immediately preceding institution of an action to  
3 enforce the lien.” NRS 116.3116(2)(c).

4 12. In Nevada, when a homeowners association properly forecloses upon a lien containing a  
5 super-priority lien component, such foreclosure extinguishes a first deed of trust.

6 13. On or about December 24, 1996, Patricia Butler, an unmarried woman, (*“the Former*  
7 *Owner*”) purchased the Property.

8 14. On or about December 22, 2005, the Former Owner obtained a loan and entered into a deed  
9 of trust with First Magnus Financial Corporation. (*“Magnus”* and/or *“Lender”*) recorded  
10 against the Property on January 10, 2006, for the loan amount of \$264,750.00 (the *“Deed of*  
11 *Trust”*). The Deed of Trust provides that Mortgage Electronic Registration Services  
12 (*“MERS”*) is beneficiary, as nominee for Lender and Lender’s successors and assigns. The  
13 Deed of Trust was in the amount of \$264,750.00, and the Deed of Trust was recorded in the  
14 Clark County Recorder’s office on January 10, 2006.

15 15. The Former Owner executed a Planned Unit Development Rider along with the Deed of  
16 Trust, effective as of December 22, 2005.

#### 17 **The HOA Lien and Foreclosure**

18 16. Upon information and belief, the Former Owner of the Property failed to pay to HOA all  
19 amounts due to pursuant to HOA’s governing documents.

20 17. Accordingly, on March 31, 2010, HOA, through HOA Trustee, recorded a Notice of  
21 Delinquent Assessment Lien (*“HOA Lien”*). The HOA Lien stated that the amount due to the  
22 HOA was \$643.00, plus accruing assessments, interest, costs and attorney’s fees.

23 18. On June 16, 2010, HOA, through HOA Trustee, recorded a Notice of Default and Election to  
24 Sell (*“NOD”*) against the Property. The NOD stated the amount due to the HOA was  
25 \$1,703.00 as of May 13, 2010, plus accruing assessments, interest, costs and attorney’s fees.

26 19. On June 18, 2010, the HOA Trustee mailed to BAC Home Loans Servicing, LP, fka  
27 Countrywide Home Loans Bank, that eventually by merger was assigned to Bank of America,  
28 N.A. (*“BANA”*), the NOD.

20. Upon information and belief, after the NOD was recorded, on June 16, 2010, BANA, by and through its agent, contacted the HOA Trustee and requested a ledger identifying the super-priority lien amount comprising of 9 months of delinquent assessments that were owed to the HOA prior to the filing of the HOA Lien ("*Super-Priority Lien Amount*").
21. Upon information and belief, in response to BANA's request sent to the HOA Trustee requesting a ledger identifying the Super-Priority Lien Amount, the HOA Trustee provided an "amended demand on behalf of [the HOA]... through August 22, 2011" dated July 21, 2011, to BANA or its agent identifying that \$2,641.00 was due through August 22, 2011.
22. Upon information and belief, on September 23, 2010, BANA, through Miles, Bauer, Bergstrom & Winter, LLP ("*Miles Bauer*"), provided a payment of \$58.50 to the HOA Trustee, which allegedly included payment of up to nine months of delinquent assessments prior to the HOA Lien comprising the Super-Priority Lien Amount (the "*Attempted Payment*").
23. Upon information and belief, HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$58.50.
24. On August 2, 2012, HOA Trustee, as agent for the HOA, recorded a Notice of Foreclosure Sale against the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$2,641.00 and set a sale date for the Property of September 5, 2012, at 2:00 P.M., to be held at 9500 W. Flamingo Road, Suite 205, Las Vegas, Nevada 89147.
25. On September 5, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded a Foreclosure Deed on September 11, 2012 ("*HOA Foreclosure Deed*"), which stated that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the HOA Foreclose Sale for the highest bid amount of \$3,700.00.
27. Upon information and belief, after the NOD was recorded, BANA, the purported holder of the Deed of Trust recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA and requested adequate proof of the super priority amount of assessments by providing a breakdown of nine (9) months of common HOA assessments as

of the HOA Lien in order for BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the Super-Priority Lien Amount.

28. In none of the recorded documents, nor in any other notice recorded with the Clark County Recorder's Office, did the HOA and/or HOA Trustee specify or disclose that any individual or entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien in advance of the HOA Foreclosure Sale.
29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the amount of \$3,700.00, thereby purchasing the Property for said amount.
30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted to pay the Super-Priority Lien Amount.
31. Upon information and belief, the debt owed to Lender by the Former Owner of the Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value of the Property at the time of the HOA Foreclosure Sale.
32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.
33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the Property subject to the Deed of Trust.
34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not have bid on the Property.
35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would not have received payment, interest, fees, collection costs and assessments related to the Property would have remained unpaid.



1 36. HOA Trustee acted as an agent of HOA.

2 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of  
3 respondeat superior.

4 38. HOA and HOA Trustee conspired together to hide material information related to the  
5 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the  
6 rejection of such payment or Attempted Payment; and the priority of the HOA  
7 Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA  
8 Foreclosure Sale.

9 39. The information related to any Attempted Payment or payments made by Lender, the  
10 homeowner or others to the Super Priority Lien Amount was not recorded and would only be  
11 known by BANA, Lender, the HOA and HOA Trustees.

12 40. The Super-Priority Lien Amount should have included the 9 months of assessments  
13 immediately proceeding the filing of the HOA Lien.

14 41. The Property was subject to the HOA's governing documents.

15 42. The Former Owner failed to pay the HOA.

16 43. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the  
17 aforementioned information for their own economic gain to the detriment of the bidders and  
18 potential bidders at the HOA Foreclosure Sale.

19 44. Lender first disclosed BANA's Attempted Payment to the HOA Trustee in Lender's First  
20 Supplemental NRCP 16.1 Disclosure, electronically filed on February 19, 2016, in *Lender v.*  
21 *Plaintiff, HOA and HOA Trustee*, filed in District Court, Clark County, Nevada as Case No.  
22 A-15-717806-C (the "*Case*"), plus three days for mailing providing a discovery date of  
23 February 22, 2016 ("*Discovery*").

24 **FIRST CAUSE OF ACTION**

25 **(Intentional, or Alternatively Negligent, Misrepresentation**

26 **Against the HOA and HOA Trustee)**

27 45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44  
28 hereof as if set forth fully herein.

- 1 46. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at  
2 the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the  
3 Super-Priority Lien Amount.
- 4 47. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
5 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from  
6 many additional services on behalf of HOA related the Property and proceedings related to  
7 the HOA Foreclosure Sale.
- 8 48. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or  
9 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the  
10 Super-Priority Lien Amount.
- 11 49. Consequently, HOA and HOA Trustee received substantial benefit as a result of their  
12 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and  
13 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 14 50. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral  
15 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any  
16 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 17 51. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure  
18 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of  
19 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA  
20 Foreclosure Sale for their own economic gain.
- 21 52. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale  
22 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust  
23 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure  
24 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to  
25 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their  
26 own economic gain.
- 27 53. Alternatively, HOA and HOA Trustee grossly were negligent by failing to disclose material  
28 information related to the Attempted Payment of the Super-Priority Lien Amount.

- 1 54. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted  
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA  
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at  
4 the HOA Foreclosure Sale.
- 5 55. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the  
6 Property.
- 7 56. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 57. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,  
10 HOA Trustee would not have received payment for the work that it performed on behalf of  
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 58. Plaintiff attended the sale as a ready and willing, and able buyer.
- 13 59. Plaintiff would not have purchased the Property if it had been informed that any individual or  
14 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA  
15 Foreclosure Sale.
- 16 60. As a direct result of HOA and HOA Trustee's acceptance of a payment or Attempted  
17 Payment of the Super-Priority Lien Amount and their subsequent intentional or grossly  
18 negligent failure to advise the bidders and potential bidders at the HOA Foreclosure Sale of  
19 the facts related thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale  
20 and thereby purchased the Property.
- 21 61. HOA and HOA Trustee each profited from their intentional and/or negligent  
22 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing  
23 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 24 62. HOA and HOA Trustee materially misrepresented facts by hiding and failing to advise  
25 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the  
26 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the  
27 priority of Deed of Trust vis a vis the HOA Lien.  
28

- 1 63. Lender, BANA, HOA and HOA Trustee solely possessed information related to the  
2 Attempted Payment of the Super-Priority Lien Amount prior to and at the time of the HOA  
3 Foreclosure Sale, and intentionally withheld such information for their own economic gain.  
4 64. Alternatively, HOA and HOA Trustee were gross negligent when it withheld information  
5 related to the Attempted Payment of the Super-Priority Lien Amount.  
6 65. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent  
7 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.  
8 66. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure  
9 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien  
10 Amount at the time of the HOA Sale and that their failure to disclose such information would  
11 promote the sale of the Property.  
12 67. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and  
13 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-  
14 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed  
15 of Trust was subordinate to the HOA Lien.  
16 68. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-  
17 Priority Lien Amount.  
18 69. The HOA and the HOA Trustee breached that duty to disclose to Plaintiff.  
19 70. As a result of the HOA and HOA Trustee's breach of its duty of care to bidders at he HOA  
20 Foreclosure Sale for its own economic gain, Plaintiff has been economically damaged in  
21 many aspects.  
22 71. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff Trust to purchase,  
23 maintain, operate, litigate various cases and generally manage the Property would be lost  
24 along with the lost opportunity of purchasing other available property offered for sale where a  
25 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to  
26 purchase a property free and clear of the deed of trust and all other liens.  
27 72. As a direct and proximate result of the actions of the Defendants, it has become necessary for  
28 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

73. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

**SECOND CAUSE OF ACTION**

**(Breach of the Duty of Good Faith Against the HOA and HOA Trustee)**

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 73 as if set forth fully herein.

75. NRS 116.113 provides that every duty governed by NRS 116, Nevada's version of the Common-Interest Ownership Uniform Act, must be performed in good faith.

76. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained evidence detailing Super-Priority Lien Amount.

77. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien Amount by the Attempted Payment and/or HOA or HOA Trustee.

78. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the Attempted Payment.

79. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach their duty of good faith dealings pursuant to NRS 116, to the Plaintiff.

80. By virtue of its actions and inactions, HOA and HOA Trustee substantially benefitted to the detriment of the Plaintiff.

81. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

82. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

**THIRD CAUSE OF ACTION**

**(Conspiracy)**

83. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 82 as if set forth fully herein.

- 1 84. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the  
2 Super-Priority Lien Amount.
- 3 85. Upon information and belief, acting together, Defendants reached an implicit or express  
4 agreement amongst themselves whereby they agreed to withhold the information concerning  
5 the Attempted Payment of the Super-Priority Lien Amount from bidders and potential  
6 bidders at the HOA Foreclosure Sale.
- 7 86. Defendants knew or should have known that their actions and omissions would injure the  
8 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To  
9 further their conspiracy, upon information and belief, Defendants rejected the Attempted  
10 Payment for the purpose of obtaining more remuneration that they would have otherwise  
11 obtained by providing notice to potential bidders at the HOA Foreclosure Sale of the  
12 Attempted Payment.
- 13 87. As a direct and proximate result of the actions of the Defendants, it has become necessary for  
14 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 15 88. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
16 Procedure as further facts become known.
- 17 WHEREFORE, Plaintiff prays for relief as follows:
- 18 1. For damages to be proven at trial in excess of \$15,000;  
19 2. For punitive damages in an amount to be determined at trial;  
20 3. For an award of reasonable attorneys' fees as special damages, and otherwise  
21 under Nevada law;
- 22 ///  
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- 1 4. For pre-judgment and post-judgment interest at the statutory rate of interest; and  
2 5. For such other and further relief that the Court deems just and proper.

3 DATED this 19<sup>th</sup> day of February, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5  
6 /s/ Roger P. Croteau  
7 ROGER P. CROTEAU, ESQ.  
8 Nevada Bar No. 4958  
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10 Las Vegas, Nevada 89102  
11 (702) 254-7775  
12 *Attorney for Plaintiff*  
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**AFFT**

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Attorney(s) for: Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Daisy Trust, a Nevada Trust

Plaintiff(s),

vs.

El Capitan Ranch Landscape Maintenance  
Association

Defendant(s).

Case No.: A-19-789674-C

Dept. No.: 14

Date:  
Time:

**AFFIDAVIT OF SERVICE**

I, **Susan Kruse**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The Affiant received 1 copy of the: Summons; Complaint on the 21st day of February, 2019 and served the same on the 21st day of February, 2019 at 12:00pm by serving the Defendant, El Capitan Ranch Landscape Maintenance Association, by personally delivering and leaving a copy at Registered Agent, Associated Nevada South, 3675 W. Cheyenne Ave., #100, North Las Vegas, NV 89032 with Lizette Delgado, Client Service Specialist, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.



State of Nevada, County of Clark  
SIGNED AND SWORN to before me on this  
21st day of February, 2019

By: Susan Kruse

Notary Public:



Affiant: Susan Kruse  
#: 1469

J & L Process Service, License # 1926  
Work Order No: 19-7037





1 **ANS**  
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12 *Ranch Landscape Maintenance Association*

7  
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DAISY TRUST, a Nevada trust,  
11 Plaintiff,

Case No.: A-19-789674-C  
Dept. No.: 14

12 vs.

**EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION'S  
ANSWER TO COMPLAINT**

13 EL CAPITAN RANCH LANDSCAPE  
14 MAINTENANCE ASSOCIATION, a  
15 domestic non-profit corporation,  
16 Defendant.

17 El Capitan Ranch Landscape Maintenance Association, (the "Association") by and  
18 through its attorneys, Leach Kern Gruchow Anderson Song, answers Daisy Trust's Complaint  
19 ("Complaint") as follows:

20 **PARTIES AND JURISDICTION**

21 1. Answering Paragraph 1 of the Complaint, the Association is without sufficient  
22 knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 and  
23 therefore denies the same.

24 2. Answering Paragraph 2 of the Complaint, the Association is without sufficient  
25 knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 and  
26 therefore denies the same.

27 3. Answering Paragraph 3 of the Complaint, the Association is without sufficient  
28 knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and  
therefore denies the same.

4. Answering Paragraph 4 of the Complaint, the Association is without sufficient

LEACH KERN GRUCHOW ANDERSON SONG  
2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

JA014

1 knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and  
2 therefore denies the same.

3 5. Answering Paragraph 5 of the Complaint, the Association admits said allegations.

4 6. Answering Paragraph 6 of the Complaint, the Association is without sufficient  
5 knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 and  
6 therefore denies the same.

7 7. Answering Paragraph 7 of the Complaint, the Association is without sufficient  
8 knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 and  
9 therefore denies the same.

10 8. Answering Paragraph 8 of the Complaint, the Association is without sufficient  
11 knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 and  
12 therefore denies the same.

13 **GENERAL ALLEGATIONS**

14 9. Answering Paragraph 9 of the Complaint, the Association admits said allegations.

15 10. Answering Paragraph 10 of the Complaint, the Association admits said  
16 allegations.

17 11. Answering Paragraph 11 of the Complaint, the Association is without sufficient  
18 knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 and  
19 therefore denies the same.

20 12. Answering Paragraph 12 of the Complaint, the Association admits said  
21 allegations.

22 13. Answering Paragraph 13 of the Complaint, the Association is without sufficient  
23 knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 and  
24 therefore denies the same.

25 14. Answering Paragraph 14 of the Complaint, the Association is without sufficient  
26 knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 and  
27 therefore denies the same.

28 15. Answering Paragraph 15 of the Complaint, the Association is without sufficient

1 knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 and  
2 therefore denies the same.

3 **The HOA Lien and Foreclosure**

4 16. Answering Paragraph 16 of the Complaint, the Association admits said  
5 allegations.

6 17. The Association affirmatively states that the allegations contained in Paragraph 17  
7 of the Complaint refer to the Notice of Delinquent Assessment Lien, the terms of which speaks  
8 for itself, and which the Association is not required to admit or deny. To the extent that an  
9 answer may be required to this Paragraph, the Association is without sufficient knowledge to  
10 form a belief as to the truth of the allegations and therefore denies the same.

11 18. The Association affirmatively states that the allegations contained in Paragraph 18  
12 of the Complaint refer to the Notice of Default and Election to Sell, the terms of which speaks  
13 for itself, and which the Association is not required to admit or deny. To the extent that an  
14 answer may be required to this Paragraph, the Association is without sufficient knowledge to  
15 form a belief as to the truth of the allegations and therefore denies the same.

16 19. Answering Paragraph 19 of the Complaint, the Association is without sufficient  
17 knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 and  
18 therefore denies the same.

19 20. Answering Paragraph 20 of the Complaint, the Association is without sufficient  
20 knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 and  
21 therefore denies the same.

22 21. Answering Paragraph 21 of the Complaint, the Association is without sufficient  
23 knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 and  
24 therefore denies the same.

25 22. Answering Paragraph 22 of the Complaint, the Association is without sufficient  
26 knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 and  
27 therefore denies the same.

28 23. Answering Paragraph 23 of the Complaint, the Association is without sufficient

1 knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 and  
2 therefore denies the same.

3 24. The Association affirmatively states that the allegations contained in Paragraph 24  
4 of the Complaint refer to the Notice of Foreclosure Sale, the terms of which speaks for itself, and  
5 which the Association is not required to admit or deny. To the extent that an answer may be  
6 required to this Paragraph, the Association is without sufficient knowledge to form a belief as to  
7 the truth of the allegations and therefore denies the same.

8 25. The Association affirmatively states that the allegations contained in Paragraph 25  
9 of the Complaint refer to the Foreclosure Deed, the terms of which speaks for itself, and which  
10 the Association is not required to admit or deny. To the extent that an answer may be required to  
11 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of  
12 the allegations and therefore denies the same.

13 27. Answering Paragraph 27 of the Complaint, the Association is without sufficient  
14 knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 and  
15 therefore denies the same.

16 28. The Association affirmatively states that the allegations contained in Paragraph 28  
17 of the Complaint refer to the Recorded Documents, the terms of which speaks for itself, and  
18 which the Association is not required to admit or deny. To the extent that an answer may be  
19 required to this Paragraph, the Association is without sufficient knowledge to form a belief as to  
20 the truth of the allegations and therefore denies the same.

21 29. Answering Paragraph 29 of the Complaint, the Association is without sufficient  
22 knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 and  
23 therefore denies the same.

24 30. Answering Paragraph 30 of the Complaint, the Association is without sufficient  
25 knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 and  
26 therefore denies the same.

27 31. Answering Paragraph 31 of the Complaint, the Association is without sufficient  
28 knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 and

1 therefore denies the same.

2 32. Answering Paragraph 32 of the Complaint, the Association is without sufficient  
3 knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 and  
4 therefore denies the same.

5 33. Answering Paragraph 33 of the Complaint, the Association is without sufficient  
6 knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 and  
7 therefore denies the same.

8 34. Answering Paragraph 34 of the Complaint, the Association is without sufficient  
9 knowledge to form a belief as to the truth of the allegations contained in Paragraph 34 and  
10 therefore denies the same.

11 35. Answering Paragraph 35 of the Complaint, the Association is without sufficient  
12 knowledge to form a belief as to the truth of the allegations contained in Paragraph 35 and  
13 therefore denies the same.

14 36. Answering Paragraph 36 of the Complaint, the Association denies said  
15 allegations.

16 37. Answering Paragraph 37 of the Complaint, the Association denies said  
17 allegations.

18 38. Answering Paragraph 38 of the Complaint, the Association denies said  
19 allegations.

20 39. Answering Paragraph 39 of the Complaint, the Association is without sufficient  
21 knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 and  
22 therefore denies the same.

23 40. Answering Paragraph 40 of the Complaint, the Association is without sufficient  
24 knowledge to form a belief as to the truth of the allegations contained in Paragraph 40 and  
25 therefore denies the same.

26 41. Answering Paragraph 41 of the Complaint, the Association admits said  
27 allegations.

28 42. Answering Paragraph 42 of the Complaint, the Association admits said

1 allegations.

2 43. Answering Paragraph 43 of the Complaint, the Association denies said  
3 allegations.

4 44. Answering Paragraph 44 of the Complaint, the Association is without sufficient  
5 knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 and  
6 therefore denies the same.

7 **FIRST CAUSE OF ACTION**

8 **(Intentional, or Alternatively Negligent, Misrepresentation**

9 **Against the HOA and HOA Trustee)**

10 45. Answering Paragraph 45 of the Complaint, the Association repeats and re-alleges  
11 its Responses to Paragraphs 1 through 44 as set forth herein.

12 46. Answering Paragraph 46 of the Complaint, the Association is without sufficient  
13 knowledge to form a belief as to the truth of the allegations contained in Paragraph 46 and  
14 therefore denies the same.

15 47. Answering Paragraph 47 of the Complaint, the Association denies said  
16 allegations.

17 48. Answering Paragraph 48 of the Complaint, the Association is without sufficient  
18 knowledge to form a belief as to the truth of the allegations contained in Paragraph 48 and  
19 therefore denies the same.

20 49. Answering Paragraph 49 of the Complaint, the Association denies said  
21 allegations.

22 50. Answering Paragraph 50 of the Complaint, the Association is without sufficient  
23 knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 and  
24 therefore denies the same.

25 51. Answering Paragraph 51 of the Complaint, the Association denies said  
26 allegations.

27 52. Answering Paragraph 52 of the Complaint, the Association denies said  
28 allegations.

1           53.     Answering Paragraph 53 of the Complaint, the Association denies said  
2 allegations.

3           54.     Answering Paragraph 54 of the Complaint, the Association denies said  
4 allegations.

5           55.     Answering Paragraph 55 of the Complaint, the Association denies said  
6 allegations.

7           56.     Answering Paragraph 56 of the Complaint, the Association is without sufficient  
8 knowledge to form a belief as to the truth of the allegations contained in Paragraph 56 and  
9 therefore denies the same.

10          57.     Answering Paragraph 57 of the Complaint, the Association is without sufficient  
11 knowledge to form a belief as to the truth of the allegations contained in Paragraph 57 and  
12 therefore denies the same.

13          58.     Answering Paragraph 58 of the Complaint, the Association is without sufficient  
14 knowledge to form a belief as to the truth of the allegations contained in Paragraph 58 and  
15 therefore denies the same.

16          59.     Answering Paragraph 59 of the Complaint, the Association is without sufficient  
17 knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 and  
18 therefore denies the same.

19          60.     Answering Paragraph 60 of the Complaint, the Association denies said  
20 allegations.

21          61.     Answering Paragraph 61 of the Complaint, the Association denies said  
22 allegations.

23          62.     Answering Paragraph 62 of the Complaint, the Association denies said  
24 allegations.

25          63.     Answering Paragraph 63 of the Complaint, the Association is without sufficient  
26 knowledge to form a belief as to the truth of the allegations contained in Paragraph 63 and  
27 therefore denies the same.

28          64.     Answering Paragraph 64 of the Complaint, the Association denies said

1 allegations.

2 65. Answering Paragraph 65 of the Complaint, the Association denies said  
3 allegations.

4 66. Answering Paragraph 66 of the Complaint, the Association denies said  
5 allegations.

6 67. Answering Paragraph 67 of the Complaint, the Association denies said  
7 allegations.

8 68. Answering Paragraph 68 of the Complaint, the Association denies said  
9 allegations.

10 69. Answering Paragraph 69 of the Complaint, the Association denies said  
11 allegations.

12 70. Answering Paragraph 70 of the Complaint, the Association denies said  
13 allegations.

14 71. Answering Paragraph 71 of the Complaint, the Association is without sufficient  
15 knowledge to form a belief as to the truth of the allegations contained in Paragraph 71 and  
16 therefore denies the same.

17 72. Answering Paragraph 72 of the Complaint, the Association denies said  
18 allegations.

19 73. The Association contends that the allegations contained in Paragraph 73 of the  
20 Complaint constitute conclusions of law rather than factual allegations to which an answer is  
21 required. To the extent that an answer may be required to this Paragraph, the Association is  
22 without sufficient knowledge to form a belief as to the truth of the allegations and therefore  
23 denies the same.

24 **SECOND CAUSE OF ACTION**

25 **(Breach of the Duty of Good Faith Against the HOA and HOA Trustee)**

26 74. Answering Paragraph 74 of the Complaint, the Association repeats and re-alleges  
27 its Responses to Paragraphs 1 through 73 as set forth herein.

28 75. The Association affirmatively states that the allegations contained in Paragraph 75



1 of the Complaint refer to NRS 116.113 and NRS 116, the terms of which speaks for itself, and  
2 which the Association is not required to admit or deny. To the extent that an answer may be  
3 required to this Paragraph, the Association is without sufficient knowledge to form a belief as to  
4 the truth of the allegations and therefore denies the same.

5 76. Answering Paragraph 76 of the Complaint, the Association is without sufficient  
6 knowledge to form a belief as to the truth of the allegations contained in Paragraph 76 and  
7 therefore denies the same.

8 77. Answering Paragraph 77 of the Complaint, the Association is without sufficient  
9 knowledge to form a belief as to the truth of the allegations contained in Paragraph 77 and  
10 therefore denies the same.

11 78. Answering Paragraph 78 of the Complaint, the Association is without sufficient  
12 knowledge to form a belief as to the truth of the allegations contained in Paragraph 78 and  
13 therefore denies the same.

14 79. Answering Paragraph 79 of the Complaint, the Association denies said  
15 allegations.

16 80. Answering Paragraph 80 of the Complaint, the Association denies said  
17 allegations.

18 81. Answering Paragraph 81 of the Complaint, the Association denies said  
19 allegations.

20 82. The Association contends that the allegations contained in Paragraph 82 of the  
21 Complaint constitute conclusions of law rather than factual allegations to which an answer is  
22 required. To the extent that an answer may be required to this Paragraph, the Association is  
23 without sufficient knowledge to form a belief as to the truth of the allegations and therefore  
24 denies the same.

25 **THIRD CAUSE OF ACTION**

26 **(Conspiracy)**

27 83. Answering Paragraph 83 of the Complaint, the Association repeats and re-alleges  
28 its Responses to Paragraphs 1 through 82 as set forth herein.

84. Answering Paragraph 84 of the Complaint, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 84 and therefore denies the same.

85. Answering Paragraph 85 of the Complaint, the Association denies said allegations.

86. Answering Paragraph 86 of the Complaint, the Association denies said allegations.

87. Answering Paragraph 87 of the Complaint, the Association denies said allegations.

88. The Association contends that the allegations contained in Paragraph 88 of the Complaint constitute conclusions of law rather than factual allegations to which an answer is required. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

## **AFFIRMATIVE DEFENSES**

As a separate defense to the Complaint, the Association asserts the following affirmative defenses:

### FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Association upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

The Association alleges that the occurrence referred to in the Complaint, and all injuries and damaged, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom this Association has no control.

### **THIRD AFFIRMATIVE DEFENSE**

All risks and dangers involved in the factual situation described in the Complaint were open, obvious, and known to Daisy Trust, and Daisy Trust voluntarily assumed said risks and dangers.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 The Association is informed, believes, and thereon alleges that the claims of Daisy Trust  
3 are reduced, modified, and/or barred by the Doctrine of Laches.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 The Association is informed, believes, and thereon alleges that the claims of Daisy Trust  
6 are reduced, modified, and/or barred by the Doctrine of Unclean Hands.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Daisy Trust is barred from relief on the grounds that they have acted in bad faith.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 The Association is informed, believes, and thereon alleges that the claims of Daisy Trust  
11 are reduced, modified, and/or barred by the Doctrine of Waiver.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 That it has become necessary for the Association to retain the law firm of Leach Kern  
14 Gruchow Anderson Song to defend and litigate this action, and the Association is therefore  
15 entitled to reasonable attorneys' fees.

16 **NINTH AFFIRMATIVE DEFENSE**

17 Daisy Trust is barred from recovering any special damages herein for failure to  
18 specifically allege the kind of special damage claimed, pursuant to NRCP 9(g).

19 **TENTH AFFIRMATIVE DEFENSE**

20 Daisy Trust is barred from relief on the grounds that they have failed to mitigate their  
21 damages.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 The Association performed no acts or omissions that would warrant the imposition of  
24 damages, including exemplary or punitive damages.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 Daisy Trust, by its own acts and conduct, waived and abandoned any and all claims as  
27 alleged herein against the Association.

28 ...

**THIRTEENTH AFFIRMATIVE DEFENSE**

The Association denies each and every allegation of Daisy Trust not specifically admitted or otherwise pled herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Daisy Trust suffered no damages as a result of the events underlying the allegations contained in the complaint

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Association was required by Nevada law and the CC&Rs to hire a third-party to collect past due assessments of its unit owners.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Daisy Trust lacks standing.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Daisy Trust's claims are barred by the applicable statutes of limitations and/or repose.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Daisy Trust failed to name necessary and indispensable parties.

**NINETEENTH AFFIRMATIVE DEFENSE**

Daisy Trust's claims are barred by *res judicata*.

**TWENTIETH AFFIRMATIVE DEFENSE**

Daisy Trust's claims are barred by collateral estoppel.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Daisy Trust's claims fail on the basis that they were not pled with particularity.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Daisy Trust's damages, if any, were caused in whole or in part by the intervening and superseding conduct of others.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Daisy Trust did not exercise ordinary care, caution, or prudence to avoid the loss it complains of in the Complaint and therefore it directly and proximately caused the alleged loss.

...

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Defendants other than the Association caused or contributed to the alleged damages of Daisy Trust. Therefore, any award made in favor of the Plaintiff in this case must be divided between those Defendants so that each pays only their fair share in relationship to their amount of fault.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Daisy Trust's claims are barred, in whole or in part, by the Doctrine of Economic Loss.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The Association owed no duty to Daisy Trust related to the Property.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Daisy Trust is bound to exercise reasonable care and diligence to avoid loss and may not recover for alleged losses which could have been prevented by reasonable efforts or expenditures.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The Association was not in privity of contract, whether express or implied, with Daisy Trust and as such, owed no contractual duties.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Daisy Trust's claims against the Association are barred, in whole or in part, by the doctrines of unilateral and/or mutual mistake.

**THIRTIETH AFFIRMATIVE DEFENSE**

There is no basis for Daisy Trust's potential recovery of costs or attorney's fees.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Daisy Trust did not justifiably rely, in any fashion whatsoever, upon any statement, representation, advice, or conduct of the Association, and did not act upon any statement, representation, advise, or conduct to its detriment.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

If it is determined that the Association committed negligence *per se*, the Association's violation was committed with legally sufficient excuse and/or justification.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

The Association is informed, believes, and thereon alleges that the claims of Daisy Trust are reduced, modified, and/or barred by the Doctrine of Election of Remedies.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

The Association hereby incorporates by reference those affirmative defenses enumerated in NRCP 8 as if fully set forth herein. In the event further investigation or discovery reveals the applicability of such defenses, the Association reserves the right to seek leave of the court to amend this Answer to specifically assert any such defenses.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Association's Answer, and therefore, the Association reserves the right to amend its Answer to allege additional affirmative defenses is subsequent investigation warrants.

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1       **WHEREFORE**, the Association requests judgment as follows:

- 2       1.     Daisy Trust takes nothing by virtue of the Complaint;
- 3       2.     That Daisy Trust's Complaint be dismissed with prejudice and the Association be
- 4               dismissed from this action;
- 5       3.     That the Association be awarded costs of defense, including reasonable attorneys'
- 6               fees in defending against Daisy Trust's Complaint; and,
- 7       4.     For such other relief that the Court may deem just and proper.

8       DATED this 13th day of March, 2019

9                               **LEACH KERN GRUCHOW ANDERSON SONG**

10                              

11                              \_\_\_\_\_  
12                              Sean L. Anderson  
13                              Nevada Bar No. 7259  
14                              2525 Box Canyon Drive  
15                              Las Vegas, Nevada 89128  
16                              Attorneys for Defendant El Capitan Ranch  
17                              Landscape Maintenance Association

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW  
3 ANDERSON SONG, hereby certified that on this 13th day of March, 2019, caused to be served  
4 via the electronic filing system (if the intended recipients are registered users), served a true and  
5 correct copy of the foregoing, **EL CAPITAN RANCH LANDSCAPE MAINTENANCE**  
6 **ASSOCIATION'S ANSWER TO COMPLAINT**, as follows:

7 Roger P. Croteau

8 Timothy E. Rhoda

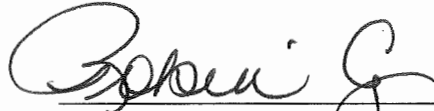
9 **ROGER P. CROTEAU & ASSOCIATES, LTD.**

10 2810 W. Charleston Boulevard, Suite 75

11 Las Vegas, Nevada 89148

12 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)

13 *Attorneys for Plaintiff*

14 

15 An Employee of LEACH KERN GRUCHOW  
16 ANDERSON SONG  
17  
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Ranch Landscape Maintenance Association*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,  
Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, a domestic  
non-profit corporation,

Defendant.

Case No.: A-19-789674-C  
Dept. No.: 14

**EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION'S  
MOTION FOR SUMMARY JUDGMENT**

**HEARING REQUESTED**

Defendant El Capitan Ranch Landscape Maintenance Association (the "Association"), by and through its attorneys, Leach Kern Gruchow Anderson Song, respectfully submits its Motion for Summary Judgment ("Motion"). The Motion is based upon NRCP 56, the attached Memorandum of Points and Authorities, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing of this Motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Association's actions while conducting a foreclosure sale are strictly governed by NRS Chapter 116.3116 *et. seq.* Plaintiff's claims are each premised on the untenable position that the Association was required to disclose an attempted payment of an amount significantly less than what was owed under the Association's delinquent assessment lien by a third-party

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1 entity. The Association is entitled to summary judgment in this case because the Supreme Court  
2 of Nevada has repeatedly held that disclosure of attempted partial payment of a delinquent  
3 assessment lien is not required under NRS 116.3116 *et. seq.* Because the Association was not  
4 required to disclose the information alleged in the Complaint, Plaintiff cannot demonstrate any  
5 breach of the law nor duty owed under the law and the Association is entitled to summary  
6 judgment.

7 Finally, Plaintiff's claims are premised on the argument that the Association somehow  
8 made warranties to Plaintiff that title to the subject property was being conveyed free and clear  
9 of any encumbrances. As aptly noted by the Nevada Supreme Court, "one who bids upon  
10 property at a foreclosure sale does so at his peril, [and] if a sale is void, a purchaser should not be  
11 entitled to reap a windfall." *Res. Grp., LLC as Tr. of E. Sunset Rd. Tr. v. Nevada Ass'n Servs.,*  
12 *Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154, 159 fn 5 (2019) (internal quotations omitted). Plaintiff  
13 was not owed clear title, and can provide "no legal support for the unorthodox proposition that  
14 the winning bidder at a foreclosure sale can bring [any] claim [ ] when the auctioneer's  
15 foreclosure notices have disclaimed any warranties as to the title being conveyed." *A Oro, LLC*  
16 *v. Ditech Fin. LLC*, 434 P.3d 929, 2019 WL 913129 at \*1 fn 2, No. 73600 (Nev. Feb. 20, 2019)  
17 (unpublished disposition). As such, for all the reasons set forth below, the Association  
18 respectfully requests that the Court grant this motion for summary judgment.

## 19 II. Undisputed Material Facts

20 1. On September 5, 2012, the Association conducted a foreclosure sale pursuant to  
21 NRS Chapter 116 upon the real property located at 8721 Country Pines Avenue, Las Vegas,  
22 Nevada 89129 (the "Property"). *See* Compl., ¶ 25.

23 2. Plaintiff was the highest bidder at the publically held auction as evidenced by a  
24 Trustee's Deed Upon Sale. *See* Foreclosure Deed Upon Sale, **Exhibit A**.

25 3. The Foreclosure Deed Upon Sale was issued "without covenant or warranty,  
26 express or implied." *Id.*

27 4. On February 19, 2019, Plaintiff filed its Complaint asserting claims for  
28 misrepresentation, breach of duty of good faith under NRS 116.1113 and civil conspiracy.

5. On or about April 19, 2019, the case was assigned to the Court Annexed Arbitration Program.

6. On February 24, 2020, the Arbitration was held. *See* Arbitrator’s Decision, **Exhibit B.**

7. On March 9, 2020, the Arbitrator issued his decision finding in favor of the Association. *Id.*; *see also* Arbitration Award, **Exhibit C.**

### III. Legal Standard

In Nevada, “summary judgment is appropriate when the moving party is entitled to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*, 100 Nev. 178, 179, 678 P.2d 674 (1984) (citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v. Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)). Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions, answer to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (Nev. 2008). Summary judgment should not be regarded as a “disfavored procedural short cut,” rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

### IV. Arguments

A. **There is No Duty under NRS Chapter 116 to Inform Plaintiff That a Third Party Attempted to Make a Partial Payment of a Delinquent Assessment Lien.**

Plaintiff’s Complaint purportedly arises from the non-existent duty in NRS Chapter 116 to disclose that a third party attempted to make a partial payment of the Association’s delinquent assessment lien. This argument fails.

NRS 116.31162 through NRS 116.31168 details the procedures with which an HOA must comply to initiate and complete a foreclosure on its lien. Absent from NRS 116.31162 through NRS 116.31168 is any requirement to announce at the foreclosure sale that a third party

1 attempted to make a partial payment of the Association’s delinquent assessment lien. State  
2 foreclosure statutes should not be second guessed or usurped, otherwise “every piece of realty  
3 purchased at foreclosure” would be challenged and title would be clouded in contravention of the  
4 very policies underlying non-judicial foreclosure sales. *BFP v. Resolution Trust Company*, 511  
5 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994); *Golden v. Tomiyasu*, 79 Nev.  
6 503, 387 P.2d 989, 997 (1969). Nevada has followed this same line, *i.e. Charmicor Inc. v.*  
7 *Bradshaw Finance Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in  
8 denying an injunction of the foreclosure procedure under the theory that non-judicial foreclosure  
9 sales violate the principles of due process and equal protection). The Association was simply not  
10 required pursuant to NRS 116.31162 through NRS 116.31168 to disclose that a third party  
11 attempted to make a partial payment of the Association’s delinquent assessment lien.

12 There is no Nevada authority creating a separate common law duty to announce that a  
13 law firm “attempted to contact” Homeowners Association Services Inc. to make a partial  
14 payment of the Association’s lien. An HOA non-judicial foreclosure sale is a creature of statute.  
15 NRS Chapter 116 contains a comprehensive statutory scheme regulating non-judicial  
16 foreclosures. *See generally* NRS 116.3116-31168. The scope and nature of the Association’s  
17 duties are exclusively defined by these governing statutes.

18 In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the Supreme  
19 Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower court’s  
20 award of summary judgment in favor of the collection company holding that “[s]ummary  
21 judgment was appropriate on the negligent misrepresentation claim because Hampton neither  
22 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*  
23 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153  
24 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123  
25 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact  
26 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal  
27 quotation marks omitted)). *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to  
28 disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162

(2013) (not requiring any such disclosure). There are simply no duties imposed upon the Association beyond those set forth in the applicable foreclosure statutes.

Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions Plaintiff's allegation that the Association had a duty to disclose that a third party attempted to make a partial payment of the Association's delinquent assessment lien. See *Mann St. Tr. v. Elsinore Homeowners Ass'n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners' Association*, No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El Diablo v. Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass'n, Inc.*, No. 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980 Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL 6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1 (Nev. Feb. 16, 2021).

In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims asserted against the Association in this matter. See *Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series 3123 Inlet*

1 Bay, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at  
2 \*1. Plaintiff filed Petitions for Rehearing in the afore-mentioned cases and the Supreme Court of  
3 Nevada unanimously rejected the same. See Petitions for Re-Hearing, **Exhibit D**. These  
4 rejections conclusively establish that there are no set of circumstances in which Plaintiff can  
5 maintain any claim against the Association premised on the allegations that the Association had a  
6 duty to disclose that a third party attempted to make a partial payment of the Association's  
7 delinquent assessment lien.

8 Finally, the Arbitrator expressly rejected Plaintiff's allegations in his Arbitrator's  
9 Decision. See Arbitrator's Decision, **Exhibit B**. Specifically, the Arbitrator held "Plaintiff has  
10 cited no statutory authority mandating the Defendant to make disclosure as to any attempted  
11 tender."

12 There are simply no duties imposed upon the Association beyond those set forth in the  
13 applicable foreclosure statutes. As such, the Association requests summary judgment be granted  
14 in its favor.

15 **B. The Foreclosure Deed Upon Sale Was Issued Without Warranty.**

16 Plaintiff was the highest bidder at the publically held auction as evidenced by the  
17 Foreclosure Deed Upon Sale. See Foreclosure Deed Upon Sale, **Exhibit A**. Assuming for the  
18 sake of argument, and based on the real property records, that Plaintiff has an interest in the  
19 Property, the interest obtained was via a deed without warranty: meaning there was no guarantee  
20 the title received would be free and clear of encumbrances. *Id.* After an HOA's nonjudicial  
21 foreclosure sale, the person conducting the sale must "[m]ake, execute and, after payment is  
22 made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which  
23 conveys to the grantee all title of the unit's owner to the unit..." NRS 116.31164(3)(a). By  
24 definition, a deed without warranty carries the risk of a defect in title. See *e.g.* NAC 375.100  
25 ("Quitclaim deed" means a deed of conveyance operating by way of release, that is, intended to  
26 pass any title, interest or claim which the grantor may have in the premises, but not professing  
27 that the title is valid nor containing any warranty or covenants for title"); Black's Law Dictionary  
28 (10th ed. 2014) (Deed - Quitclaim Deed) ("A deed that conveys a grantor's complete interest or

1 claim in certain real property but that neither warrants nor professes that the title is valid. —  
2 Often shortened to quitclaim. — Also termed deed without covenants.”); Robert Kratovil, *Real*  
3 *Estate Law* 49 (6th ed. 1974) (“A quitclaim deed purports to convey only the grantor’s present  
4 interest in the land, if any, rather than the land itself. Since such a deed purports to convey  
5 whatever interest the grantor has at the time, its use excludes any implication that he has good  
6 title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none  
7 will be conveyed. ... A seller who knows that his title is bad or who does not know whether his  
8 title is good or bad usually uses a quitclaim deed in conveying.”)

9 Therefore, a purchaser who takes title without warranty is presumed to take it with notice  
10 of all outstanding equities and interests. *See e.g.* 59 A.L.R. 632 (Originally published in 1929)  
11 (“In all cases ... where a purchaser takes a quitclaim deed he must be presumed to take it with  
12 notice of all outstanding equities and interests of which he could, by the exercise of any  
13 reasonable diligence, obtain notice from an examination of all the records affecting the title to  
14 the property ... The very form of the deed indicates to him that the grantor has doubts  
15 concerning the title, and the deed itself is notice to him that he is getting only a doubtful title.”);  
16 *Blachy v. Butcher*, 221 F.3d 896, 908 (6th Cir. 2000) (“one who accepts a quitclaim deed is  
17 conclusively presumed to have agreed to take the title subject to all risks as to defects and  
18 encumbrances [sic].” (quoting *Fla. E. Coast Ry Co. v. Patterson*, 593 So. 2d 575, 577 (Fla. Dist.  
19 Ct. App. 1992))). To hold a grantor liable for the title conveyed – when it has made no guarantee  
20 as to title – is contrary to the intended purpose of a deed without warranty.

21 Here, the Foreclosure Deed Upon Sale specifically provides that the Association  
22 conveyed “all its right, title and interest” in the Property to Plaintiff “without covenant or  
23 warranty, express or implied.” *See* Foreclosure Deed Upon Sale, **Exhibit A**. The explicit  
24 language in the Foreclosure Deed Upon Sale made clear that there was no warranty or  
25 representations related to title. Parties engaged in a regulated business cannot plausibly claim  
26 ignorance of the relevant law. *See Del Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir. 1982);  
27 *U.S. v. Int’l Minerals & Chem. Corp.*, 402 U.S. 558, 565 (1971) (“[W]here ... the probability of  
28 regulation is so great,” one operating in that business “must be presumed to be aware of the

1 regulation.”). In purchasing the Property for the sum of \$3,700.00 at the HOA Sale, Plaintiff  
2 accepted any and all foreseeable risks and defects associated with the Property. Plaintiff (or its  
3 predecessor) voluntarily attended a foreclosure auction, voluntarily bid on the Property, and  
4 accepted the lack of warranty as to the quality of title transferred. The idea that the Association  
5 should guaranty the quality of the title transferred violates the very terms of the Foreclosure  
6 Deed Upon Sale and is entirely inequitable. Thus, Plaintiff’s claim fails from the outset and  
7 summary judgment should be entered in favor of the Association.

8 **C. The Allegations of the Complaint are Belied by the Prior Testimony of Plaintiff’s**  
9 **Representative.**

10 Mr. Haddad (the manager of Plaintiff) has testified on behalf of his numerous entities and  
11 trusts he has **no** communications with either the HOA, the collection company, or the lending  
12 institutions prior to acquiring properties at HOA sales.<sup>1</sup> For example, on August 29, 2016, Mr.  
13 Haddad testified as follows:

14 Q. Do you ever contact HOA's directly to ask about properties  
15 that are coming up?

16 A. No.

17 Q. How about that any HOA's ever contact you directly to say,  
18 hey, there is some properties for sale?

19 A. No.

20 Q. So this collection company, Hampton and Hampton, other  
21 than the methods you talked about earlier about the Nevada  
22 Legal News and the recorded document, does Hampton and  
23 Hampton ever reach out to you in any way to advertise?

24 A. No.

25 *See* Excerpt of Deposition of Eddie Haddad, August 29, 2016 at 17, **Exhibit E.**

26 On July 27, 2017, Mr. Haddad testified under oath as follows:

27 Q. Prior to purchasing a property, do you ever reach out to the  
28 HOA directly for information regarding the property?

---

<sup>1</sup> The Association has disclosed several other cases in which identical responses were provided by Mr. Haddad.



1 A. No.

2 Q. What about the HOA trustee? So here that would be Alessi  
& Koenig.

3 A. No.

4  
5 See Excerpt of Deposition of Eddie Haddad, July 27, 2017, **Exhibit F**.

6 On December 9, 2015, Eddie Haddad testified at a deposition as follows:

7 Q. Sure. Have you ever had any communication with Nevada  
Association Services prior to a foreclosure sale?

8 A. No.

9 Q. Do you have any written agreements or contracts with Nevada  
Association Services?

10 A. I do not.

11 See Excerpt of Deposition of Eddie Haddad, December 9, 2015, **Exhibit G**.

12 In a bench trial held before Judge Israel held November 15, 2017, Mr. Haddad once  
13 against testified under penalty of perjury that it was not his policy to contact or have any form of  
14 communication with either the HOA or collection company prior to a non-judicial foreclosure  
15 sale:

16 Q.I think I know the answer to this question because earlier you  
17 told your lawyer that before you bid you had no conversations  
18 with the HOA or with NAS; is that right?

19 A. That is correct.

20 Mr. Haddad explained further:

21 Q. Did you talk to the HOA about this property before you bid  
on it?

22 A No. I'm sure I would not have.

23  
24 See Excerpt of Trial Testimony by Eddie Haddad, November 15, 2017, **Exhibit H**.

25 In responding to various written discovery regarding Mr. Haddad's policy and procedures  
26 he previously testified under oath as follows:

27 INTERROGATORY NO. 20. Describe all communications  
28 between you and all persons or entities concerning the Property,  
the HOA Foreclosure Sale, the HOA Lien, including the date of

the communication, the parties to the communication, and the substance of the communication.

ANSWER TO INTERROGATORY NO. 20: None.

*See* Haddad Verified Responses to Interrogatories No. 20, **Exhibit I**; *See* Haddad Verified Responses to Interrogatories No. 21, **Exhibit J** (same interrogatory and response.)

In responding to various requests for admissions Mr. Haddad provided as follows:

Request for Admission No. 8: Admit that you communicated with the HOA Trustee regarding the Property prior to the HOA Foreclosure Sale.

Response to Request No. 8: Deny

Request for Admission No. 9: Admit that, prior to the HOA Foreclosure Sale you communicated with the HOA Trustee regarding the Property prior to the HOA Foreclosure Sale.

Response to Request No. 9: Deny

*See* Haddad Responses to Admissions Nos. 8-9, **Exhibit K**; *see also* Haddad Responses to Admissions No. 8, **Exhibit L** (same). The foregoing demonstrates that Mr. Haddad's policy and procedure was not to proactively reach out to HOAs or the collection companies prior to the foreclosure sales.

Instead, this case represents little more than Plaintiff's latest attempt to deliberately change and fabricate legal positions and arguments based upon the exigencies of the moment. In fact, just a day prior to the foreclosure sale of the Property, another Haddad trust, filed a motion before the United States Bankruptcy Court explaining the business model of his trusts:

Mr. Haddad funds the Trust, which then purchases junior liens through the Trustee's Sales held at Nevada Legal News, and thus acquires ownership of the properties, ***subject to the first mortgage lien on the properties***. . . Each of the above-referenced properties was purchased through auction via a secondary, utility, or HOA lien, ***and is subject to the first mortgage***.

*See* Motion to Use Cash Collateral *Nunc Pro Tunc, In re Paradise Harbor Place Trust*, No. 12-20213-btb, ECF No. 6 at 2–3, **Exhibit M**.

At the time of seeking bankruptcy relief, Mr. Haddad was happy to acknowledge his interest was subordinate to the banks—doing so protected his properties from his other creditors. But as his financial situation changed so too has his legal positions.

The Association presented similar evidence at the Arbitration. *See* Arbitrator’s Decision, **Exhibit B**. Pursuant to this evidence, the Arbitrator rejected Plaintiff unsupported statements that he contacted the Association or the collection company prior to the foreclosure sale. *Id.* In fact, the Arbitrator expressly held that Plaintiff presented no evidence that any such contact was attempted by Plaintiff. *Id.* In sum, Plaintiff did not contact the Association prior to the foreclosure sale and there is simply no evidence to the contrary. As such, summary judgment should be entered in favor of the Association.

**D. Plaintiff is Incapable of Proving any of its Claims as it Cannot Prove Damages.**

The Association is also entitled to summary judgment on the basis that the Plaintiff cannot prove through admissible evidence any damages as this case is over 2 years old and Plaintiff has never made required disclosures under the Nevada Rules of Civil Procedure.

NRCP 16.1 provides as follows:

**Required Disclosures.**

- **Initial Disclosures.** Except in proceedings exempted or to the extent otherwise stipulated or directed by order, a party must, **without awaiting a discovery request**, provide to other parties:

...

**(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered[.]**

NRCP 16.1 requires disclosure of documents and a computation of each category of damages claimed and production of the documents on which the computation is based. *Id.* NRCP 16.1 requires timely supplementation of disclosures and discovery responses whenever it becomes known that a disclosure or response is incomplete. *Id.* Plaintiff failed to comply with any of

1 these rules. As such, Plaintiff's Complaint fails and summary judgment must be entered in the  
2 Association's favor.

3 **E. Plaintiff's Claim against the Association is Time-Barred.**

4 Plaintiff's Complaint is time-barred. This Court is required to evaluate the Complaint for  
5 its substance, not just the labels used in the complaint. *See Nev. Power Co. v. Eighth Judicial*  
6 *Dist. Court*, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004). As set forth above, a substantive  
7 review of Plaintiff's actual allegations reveal that this is a case sounding in alleged  
8 misrepresentations related to a foreclosure sale conducted pursuant to NRS Chapter 116. Indeed,  
9 the facts giving rise to Plaintiff's claims are alleged to have occurred prior to or at the time of the  
10 foreclosure sale on September 5, 2012. *See* Compl., ¶ 25; *see also* *See* Foreclosure Deed Upon  
11 Sale, **Exhibit A**. The Complaint repeatedly confirms that the relevant acts occurred prior  
12 foreclosure sale, or as a result of an alleged rejected payment prior to an HOA foreclosure sale.

13 Claims based on an alleged failure to comply with Chapter 116 are subject to the three-  
14 year statute of limitations for claims based "upon a liability created by statute." NRS  
15 11.190(3)(a). "The phrase 'liability created by statute' means a liability which would not exist  
16 but for the statute. Where a duty exists only by virtue of a statute ... the obligation is one created  
17 by statute.'" *Torrealba v. Kesmetis*, 124 Nev. 95, 102–04, 178 P.3d 716, 722–23 (2008). In  
18 determining whether claims are actions upon a liability created by statute, the Nevada Supreme  
19 Court adopted the Supreme Court of California analysis in *Sonoma County v. Hall*, wherein the  
20 Court concluded that because the process being challenged was created and prescribed by  
21 statutes that the parties' liability for failure to perform was similarly controlled by statute. *Id.*  
22 Here, because the non-judicial foreclosure process is authorized and strictly governed by statute  
23 (discussed below), each of Plaintiff's claims are subject to NRS 11.190(3)'s three-year statute of  
24 limitations on "action[s] upon a liability created by a statute, other than a penalty or forfeiture."

25 "In determining whether a statute of limitations has run against an action, the time must  
26 be computed from the day the cause of action accrued. A cause of action 'accrues' when a suit  
27 may be maintained thereon." *Clark v. Robison*, 944 P.2d 788, 789 (Nev. 1997) (internal citation  
28 omitted). "If the facts giving rise to the cause of action are matters of public record then '[t]he

1 public record gave notice sufficient to start the statute of limitations running.” *Job's Peak*  
2 *Ranch Cmty. Ass'n, Inc. v. Douglas Cty.*, No. 55572, 2015 WL 5056232, at \*3 (Nev. Aug. 25,  
3 2015) (quoting *Cumming v. San Bernardino Redev. Agency*, 101 Cal. App. 4th 1229, 125 Cal.  
4 Rptr. 2d 42, 46 (Ct. App. 2002)); *see also Allen v. Webb*, 485 P.2d 677, 684 (Nev. 1971).

5 Plaintiff's Complaint is premised upon the Foreclosure Deed Upon Sale, which is a  
6 publicly recorded document. Because the Foreclosure Deed Upon Sale is a publicly recorded  
7 document, Plaintiff's claims accrued (at the latest) as of the date of recordation of the Trustee's  
8 Deed Upon Sale on September 11, 2012. *See* Foreclosure Deed Upon Sale, **Exhibit A**. Plaintiff  
9 did not file the present Complaint until February 19, 2019. *See* Compl. Because the Plaintiff's  
10 claims are subject to NRS 11.190(3)(a)'s three-year limitation period for a liability created by  
11 statute, as a matter of law, Plaintiff's Complaint was filed well beyond the limitations set forth in  
12 NRS 11.190(3)(a), and summary judgment should be entered in favor of the Association.

13 **D. The Association is entitled to Summary Judgment on Plaintiff's Claim for**  
14 **Intentional/Negligent Misrepresentation.**

15 The Supreme Court of Nevada has expressly held that parties such as Plaintiff cannot  
16 maintain a claim for misrepresentation against an HOA in this exact factual scenario. As set  
17 forth above, in *Noonan*, Appellants' argued the lower court erred in awarding summary  
18 judgment in favor of the collection company on Appellants' claim for negligent  
19 misrepresentation. *Id.* Appellants' claim for misrepresentation was premised on the same  
20 allegations asserted by Appellant in this matter—that Hampton and Hampton failed to disclose  
21 an attempt to pay a portion of the Association's lien. *Id.* The Supreme Court of Nevada  
22 affirmed the lower court's award of summary judgment in favor of the collection company  
23 holding that “[s]ummary judgment was appropriate on the negligent misrepresentation claim  
24 because Hampton neither made an affirmative false statement **nor omitted a material fact it**  
25 **was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394,  
26 400, 302 P.3d 1148, 1153 (2013) (providing the elements for a negligent misrepresentation  
27 claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or  
28 omission of a material fact which a party is bound in good faith to disclose is equivalent to a

false representation.”(internal quotation marks omitted)). *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any such disclosure).) As such, Appellant’s argument that there was a misrepresentation by omission fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at \*1. Specifically, the Supreme Court of Nevada held “appellant's claims for misrepresentation and breach of NRS 116.1113 fail because respondent had no duty to proactively disclose whether a superpriority tender had been made.” *Id.* Accordingly, the Association requests summary judgment be granted in its favor.

**G. The Association is entitled to Summary Judgment on Plaintiff’s Breach of Good Faith.**

Again, the Supreme Court of Nevada has affirmed dismissal of the exact claim. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because respondents had no duty to proactively disclose whether a superpriority tender had been made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at \*1(“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because respondents had no duty to proactively disclose whether a superpriority tender had been made”); *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been made.”).

Accordingly, the Association requests summary judgment be granted in its favor.

**H. The Association is entitled to Summary Judgment on Plaintiff's Claim for Civil Conspiracy.**

Similar to the other claims asserted by Plaintiff in this action, the Supreme Court of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at \*1. Specifically, the Supreme Court of Nevada held “because respondent did not do anything unlawful, appellant's civil conspiracy claim necessarily fails. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing that a civil conspiracy requires, among other things, a “concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming another”).” Accordingly, the Association requests summary judgment be granted in its favor.

**V. Conclusion**

Therefore, for the reasons set forth above, summary judgment should be entered in favor of the Association.

Dated this 27<sup>th</sup> day of May 2021.

**LEACH KERN GRUCHOW ANDERSON SONG**

/s/ T. Chase Pittsenbarger

Sean L. Anderson  
Nevada Bar No. 7259  
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2525 Box Canyon Drive  
Las Vegas, Nevada 89128  
*Attorneys for Defendant El Capitan Ranch  
Landscape Maintenance Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certified that on this 27<sup>th</sup> day of May 2021, caused to be served via ECM/ECF, a true and correct copy of the foregoing, **EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** as follows:

Roger P. Croteau  
Timothy E. Rhoda  
**ROGER P. CROTEAU & ASSOCIATES, LTD.**  
2810 W. Charleston Boulevard, Suite 75  
Las Vegas, Nevada 89148  
[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)

Ka H. Leung  
**LAW OFFICES OF KA H. LEUNG**  
6330 Spring Mountain Rd. Ste. D  
Las Vegas, NV 89146  
[kleung@leunglawfirm.com](mailto:kleung@leunglawfirm.com)

*Arbitrator*

*Attorneys for Plaintiff*

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW  
ANDERSON SONG



# Exhibit A

⑦-1

Inst #: 201209110004365  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$20.40 Ex: #  
09/11/2012 04:23:40 PM  
Receipt #: 1303621  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: ANI Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
Daisy Trust  
PO Box 36208  
Las Vegas, NV 89133

A.P.N. No.138-08-611-076

TS No. 21222-8721

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **Daisy Trust**  
The Foreclosing Beneficiary herein was: **El Capitan Ranch Landscape Maintenance Association**  
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$3,700.00**  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$3,700.00**  
The Documentary Transfer Tax: **\$20.40**  
Property address: **8721 COUNTRY PINES AVE, LAS VEGAS, NV 89129**  
Said property is in [ ] unincorporated area: City of **LAS VEGAS**  
Trustor (Former Owner that was foreclosed on): **PATRICIA BUTLER**

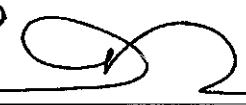
Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **March 31, 2010** as instrument number **0002894**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **Daisy Trust** (Grantee), all its right, title and interest in the property legally described as: **LOT 610 BLOCK 15**, as per map recorded in **Book 70, Pages 1** as shown in the Office of the County Recorder of **Clark County Nevada**.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **September 5, 2012** at the place indicated on the Notice of Trustee's Sale.

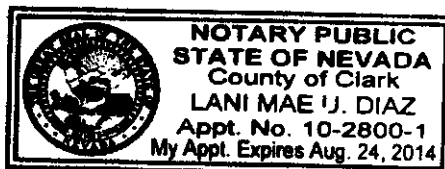
Ryan Kerbow, Esq.   
Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN to before me Sep 4. 11, 2012 

WITNESS my hand and official seal.  
(Seal)

(Signature)



HOA0101 JA047

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 138-08-611-076  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
☐ Other

FOR RECORDERS OPTIONAL USE ONLY  
Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 3,700.00

b. Deed in Lieu of Foreclosure Only (value of property (\_\_\_\_\_))

c. Transfer Tax Value: \$ 3,700.00

d. Real Property Transfer Tax Due \$ 20.40

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Alessi&Koenig, LLC  
Address: 9500 W Flamingo Rd # 205  
City: Las Vegas  
State: NV      Zip: 89147

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Daisy Trust  
Address: PO Box 36208  
City: Las Vegas  
State: NV      Zip: 89133

**COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)**

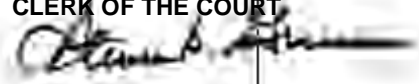
Print Name: Alessi&Koenig, LLC  
Address: 9500 W Flamingo # 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV      Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

JA048  
HOA0102

# Exhibit B



1 ABDECN  
2 Ka H. Leung  
3 NV Bar No. 12022  
4 6330 Spring Mountain Rd, Ste. D  
5 Las Vegas, NV 89146  
6 Tel: 702-638-8886  
7 Fax: 702-878-8686  
8 Email: kleung@leunglawfirm.com  
9 Arbitrator

10  
11  
12 **DISTRICT COURT**

13 **CLARK COUNTY NEVADA**

14 DAISY TRUST, Plaintiff(s)

Case No.: A-19-789674-C

15 vs.

Dept. No.: 14

16 EL CAPITAN RANCH LANDSCAPE  
17 MAINTENANCE ASSOCIATION,  
18 Defendant(s)

19 **ARBITRATOR'S DECISION**

20 **I. Procedural background**

21 The arbitration hearing for this matter was held on February 24, 2020. After considering  
22 the evidence and arguments of counsels, I enter the following decision:

23 **II. Factual background**

24 This is a suit for intentional misrepresentation, negligent misrepresentation, breach of  
25 good faith, and conspiracy. Plaintiff purchased real property located at 8721 Country Pines Ave.,  
26 Las Vegas, NV 89129 ("Property") in a homeowners association lien foreclosure sale on  
27 September 5, 2012 through a competitive bidding process.

28 After Plaintiff assumed title to the Property, Bank of America ("Bank") sued Plaintiff in a  
suit and gained title to the Property in Eighth Judicial District Court of Nevada Case No. A-15-  
717806-C. Plaintiff then brought this instant suit against Defendant El Capitan Ranch Landscape

1 Maintenance Association on the ground that Defendant failed to disclose that the Bank made  
2 tender towards Defendant's superpriority lien amount, and that the Bank's deed of trust was not  
3 extinguished for non-payment.

4 There was no dispute that HOA fees were outstanding. That the Bank had attempted  
5 tender towards the delinquent HOA lien on or about September 23, 2010.

6 A deed of trust was recorded on or about December 22, 2005.

7 A trustee's deed upon sale was recorded September 11, 2012 in favor of Plaintiff Daisy  
8 Trust.

9 The trustee's deed upon sale was made without warranty, express or implied.

10 Plaintiff is a real estate broker and had been in the real estate business for over 20 years.

### 11 **III. Intentional Misrepresentation and Negligent Misrepresentation**

12 In Nevada, fraud/intentional misrepresentation requires the following elements:

- 13 1. A false representation made by the Defendant;
- 14 2. Defendant's knowledge or belief that the representation is false, or that the Defendant
- 15 does not have a sufficient basis of information to make such representation;
- 16 3. Defendant's intention to induce Plaintiff to act or to refrain from acting in reliance upon
- 17 the misrepresentation;
- 18 4. Plaintiff's justifiable reliance upon the misrepresentation; and
- 19 5. Damage to Plaintiff resulting from such reliance.

20 *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115 (1975); Nevada Jury Instruction 9.01.

21 "A party alleging fraud must clearly and distinctly prove the fraud as alleged, or as has  
22 been said, fraud must be established by clear and convincing proof." *Miller v. Lewis*, 80 Nev.  
23 402, 403, 395 P.2d 386, 387 (1964); Nevada Jury Instruction 9.02. "Circumstances of mere  
24  
25  
26  
27  
28

1 suspicion will not warrant the court in coming to the conclusion that a fraud has been  
2 committed." *Gruber v. Baker*, 20 Nev. 453, 23 P. 858, 865 (1890).

3 In Nevada, the requisite elements for negligent misrepresentation are:

- 4 1. The defendant must have supplied information while in the course of his business,  
5 profession or employment, or any other transaction in which he had a pecuniary interest;  
6
- 7 2. The information must have been false;
- 8 3. The information must have been supplied for the guidance of the plaintiff in his business  
9 transactions;
- 10 4. The defendant must have failed to exercise reasonable care or competence in obtaining or  
11 communicating the information;
- 12 5. The plaintiff must have justifiably relied upon the information by taking action or  
13 refraining from it;
- 14 6. And, finally, as a result of his reliance upon the accuracy of the information, the plaintiff  
15 must have sustained damage.  
16

17 *Barmettler v. Reno Air*, 114 Nev. 441 (1998). Nevada Jury Instruction 9.05.  
18

19 Negligence is never presumed but must be established by substantial evidence. *Gunlock*  
20 *v. New Frontier Hotel Corp.*, 78 Nev. 182 (1962). In ordinary civil actions a fact in issue should  
21 be proved by a preponderance of evidence. *Deiss v. Southern Pac. Co.*, 56 Nev. 169 (1936).  
22

23 At the arbitration, Mr. Haddock testified that prior to all HOA foreclosure auctions, it is  
24 his normal business practice to call the HOA trustee prior to the auction to verify whether the  
25 Property was subjected to a first deed of trust. Mr. Haddock testified that he does not keep  
26 written record of his communication with HOA or HOA trustees and does not keep written  
27 company policy. Mr. Haddock testified that if he had known that a first deed of trust existed he  
28

1 would not have purchased the Property. Mr. Haddock does not specifically recall whether he  
2 called the HOA trustee prior to the auction for the Property in this case.

3 Defendant disputed that Mr. Haddock had ever called the HOA trustee prior to the  
4 auction for this specific property. At the arbitration, Defendant presented Mr. Haddock's prior  
5 statements under oath stating that he had never contacted the HOA or the HOA trustee prior to  
6 the auction for the Property in this case. In addition, contrary to Mr. Haddock's testimony at the  
7 arbitration, Defense had presented various instances where Mr. Haddock stated under oath or  
8 testified under oath that he had never contacted HOA or HOA trustee prior to HOA auctions.

9  
10 Based on the evidence presented at arbitration, I find that Plaintiff has not proven the  
11 requisite elements for intentional misrepresentation with clear and convincing evidence. I also do  
12 not find that Plaintiff has proven the requisite elements for negligent misrepresentation to a  
13 preponderance of evidence. Therefore, I find in favor of Defendant on the issues of intentional  
14 misrepresentation and negligent misrepresentation.  
15

#### 16 **IV. Breach of good faith and fair dealing**

17  
18 Plaintiff argued that Defendant owed Plaintiff a duty to disclose any attempted tender  
19 toward the superpriority lien under NRS 116.1113.

20 Chapter 116 codifies the Uniform Common Interest Ownership Act (UCIOA) in  
21 Nevada. *See* NRS 116.001 ("This chapter may be cited as the Uniform Common-Interest  
22 Ownership Act"); *SFR Inv. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 410 (2014). NRS Chapter  
23 116 includes an obligation of good faith. *See* NRS 116.1113 ("Every contract or duty governed  
24 by this chapter imposes an obligation of good faith in its performance or enforcement."). The  
25 duty of good faith is borrowed from the Uniform Commercial Code:  
26

27 This section sets forth a basic principle running throughout this Act: in  
28 transactions involving common interest communities, good faith is  
required in the performance and enforcement of all agreements and



1 duties. Good faith, as used in this Act, means observance of two standards:  
2 "honesty in fact", and observance of reasonable standards of fair dealing.  
3 While the term is not defined, the term is derived from and used in the  
4 same manner as in Section 1-201 of the Uniform Simplification of Land  
5 Transfers Act, and Sections 2-103(i)(b) and 7-404 of the  
6 Uniform Commercial Code.

7 *See* 1982 UCIOA § 1-113 cmt. 1. Nevada's version of the Uniform Commercial Code  
8 defines good faith as "honesty in fact and the observance of reasonable commercial standards of  
9 fair dealing." *See* NRS 104.1201(2)(t). The UCIOA and NRS 116.31113 impose a commercial  
10 reasonableness standard on foreclosure of association liens. No. 13-cv-1307 JCM (PAL), 2016  
11 WL 1181666, at \*3 (D. Ne v. Mar. 25, 2016) (collecting cases)). The recent opinion in *Shadow*  
12 *Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp., Inc.*, 132 Nev. Adv. Op. 5 (Jan. 28,  
13 2016), confirms that HOA foreclosures must be commercially reasonable.

14 The Nevada Supreme Court clarified in *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427  
15 P.3d 113 (2018) that "Tendering the superpriority portion of an HOA lien does not create,  
16 alienate, assign, or surrender an interest in land. Rather, it preserves a pre-existing interest, which  
17 does not require recording."

18 *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113 (2018) held that when a bank  
19 pays the superpriority portion of an HOA lien, the subsequent foreclosure sale will not  
20 extinguish Bank's mortgage lien, and the buyer at the sale will take the unit subject to Bank's  
21 mortgage lien.

22 NRS 116.3116 is clear that the superpriority portion of an HOA lien includes only  
23 charges for maintenance and nuisance abatement, and nine months of unpaid assessments.

24 The parties in this case do not dispute that a first deed of trust was recorded for the  
25 Property. What Plaintiff argued was that Defendant HOA should have disclosed that the holder  
26 of the first deed of trust made an attempted tender towards the superpriority lien and preserving  
27  
28

1 the holder's pre-existing interest. However, Plaintiff has cited no statutory authority mandating  
2 the Defendant to make disclosure as to any attempted tender. More importantly, Plaintiff did not  
3 provide any legal authority or factual circumstance which shows that Plaintiff was reasonable to  
4 assume the first deed of trust was extinguished. Rather, the existing legal authority at the time of  
5 the sale seems to put Plaintiff on notice of the risk that all HOA foreclosure sales under NRS 116  
6 are potentially subjected to first deed of trust.  
7

8 Based on the foregoing, I find that Defendant did not breach its duty of good faith and  
9 fair dealing.

#### 10 **V. Conspiracy**

11 An actionable conspiracy consists of a combination of two or more persons who, by some  
12 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
13 and damage results from the act or acts. *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284,  
14 303, 662 P.2d 610, 622 (1983).  
15

16 Based on the evidence presented at the arbitration, I find that Plaintiff has not proven the  
17 requisite elements of conspiracy to a preponderance of evidence. I therefore find in favor of  
18 Defendant.  
19

#### 20 **VI. Damages**

21 Based on my finding that Defendant is not liable, the issue of damage is moot.

#### 22 **VII. Conclusion**

23 Based on the foregoing, I find in favor of Defendant El Capitan Ranch Landscape  
24 Maintenance Association.  
25

26 Dated: March 9, 2020

27 

28  
Ka H. Leung

Arbitrator

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the March 9, 2020, the foregoing  
**ARBITRATOR'S DECISION** was served on the following by the Court's electronic filing and  
service system to all the parties on the current service list.



---

*Ka H. Leung*

# Exhibit C



ARBA  
Ka H. Leung  
NV Bar No. 12022  
6330 Spring Mountain Rd, Ste. D  
Las Vegas, NV 89146  
Tel: 702-638-8886  
Fax: 702-878-8686  
Email: kleung@leunglawfirm.com  
*Arbitrator*

**DISTRICT COURT**  
**CLARK COUNTY NEVADA**

DAISY TRUST, Plaintiff(s)

Case No.: A-19-789674-C

vs.

Dept. No.: 14

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION,  
Defendant(s)

**ARBITRATION AWARD**

The arbitration hearing in this matter was held on the date of February 24, 2020. Having considered the pre-hearing statements of the parties, the testimony of witnesses, the exhibits offered for consideration and arguments on behalf of the parties, based upon the evidence presented at the arbitration hearing, I hereby find in favor of Defendant on all causes of action.

Dated: March 9, 2020



Ka H. Leung  
*Arbitrator*

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# Exhibit D

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 8320  
BERMUDA BEACH, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,  
vs.  
SOUTH SHORES COMMUNITY  
ASSOCIATION; AND TERRA WEST  
COLLECTIONS GROUP, LLC, D/B/A  
ASSESSMENT MANAGEMENT  
SERVICES,  
Respondents.

No. 80165

FILED

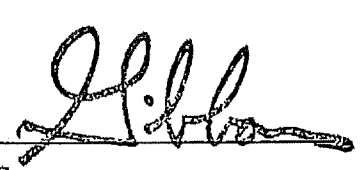
NOV 23 2020

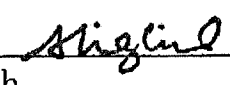
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CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

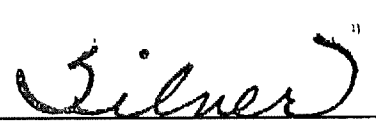
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

 J.  
Gibbons

 J.  
Stiglich

 J.  
Silver

cc: Chief Judge, The Eighth Judicial District Court  
Hon. Joseph T. Bonaventure, Senior Judge  
Roger P. Croteau & Associates, Ltd.  
McDonald Carano LLP/Las Vegas  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk



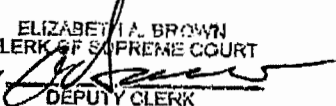
IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 6408  
HILLSIDE BROOK, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,  
vs.  
MOUNTAIN GATE HOMEOWNERS'  
ASSOCIATION, A NEVADA NON-  
PROFIT CORPORATION,  
Respondent.

No. 80134

FILED

NOV 23 2020

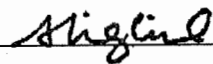
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK


ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

 J.  
Gibbons

 J.  
Stiglich

 J.  
Silver

cc: Hon. Timothy C. Williams, District Judge  
Roger P. Croteau & Associates, Ltd.  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 8920 EL  
DIABLO, A NEVADA LIMITED  
LIABILITY COMPANY,

Appellant,

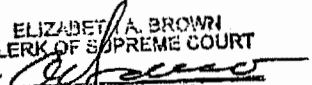
vs.

SILVERSTONE RANCH COMMUNITY  
ASSOCIATION, A NEVADA NON-  
PROFIT CORPORATION; AND  
HAMPTON & HAMPTON  
COLLECTIONS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Respondents.

No. 80039

FILED


NOV 23 2020

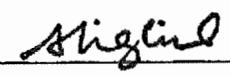
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CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

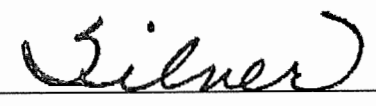
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

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

  
\_\_\_\_\_  
Stiglich J.

  
\_\_\_\_\_  
Silver J.

cc: Chief Judge, The Eighth Judicial District Court  
Hon. James M. Bixler, Senior Judge  
Roger P. Croteau & Associates, Ltd.  
Brandon E. Wood  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk

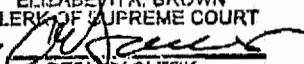
IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 3123  
INLET BAY,  
Appellant,  
vs.  
GENEVIEVE COURT HOMEOWNERS  
ASSOCIATION, INC.; TERRA WEST  
COLLECTIONS GROUP, LLC, D/B/A  
ASSESSMENT MANAGEMENT  
SERVICE,  
Respondents.

No. 80135

FILED


NOV 23 2020

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CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

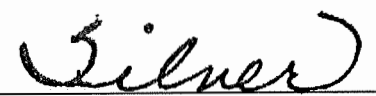
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

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

  
\_\_\_\_\_  
Stiglich J.

  
\_\_\_\_\_  
Silver J.

cc: Hon. Kerry Louise Earley, District Judge  
Roger P. Croteau & Associates, Ltd.  
Gibbs Giden Locher Turner Senet & Wittbrodt LLP/Las Vegas  
McDonald Carano LLP/Las Vegas  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 11339  
COLINWARD, A NEVADA LIMITED  
LIABILITY COMPANY,  
Appellant,  
vs.  
TRAVATA AND MONTAGE AT  
SUMMERLIN CENTRE  
HOMEOWNERS' ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION; AND NEVADA  
ASSOCIATION SERVICES, INC., A  
NEVADA CORPORATION,  
Respondents.

No. 80162

FILED


NOV 23 2020

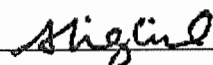
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

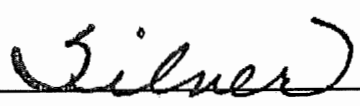
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

 J.  
Gibbons

 J.  
Stiglich

 J.  
Silver

cc: Hon. Mary Kay Holthus, District Judge  
Roger P. Croteau & Associates, Ltd.  
Brandon E. Wood  
Lipson Neilson P.C.  
Eighth District Court Clerk

# Exhibit E

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3  
4 BANK OF AMERICA, N.A., SUCCESSOR )  
5 BY MERGER TO BAC HOME LOANS )  
6 SERVICING, LP, FKA COUNTRYWIDE )  
HOME LOANS SERVICING, LP, ) CASE NO.  
2:16-CV-00540-JCM-NJK  
7 Plaintiff, )  
8 vs. )  
9 MOUNTAIN GATE HOMEOWNERS' )  
ASSOCIATION, SATICOY BAY LLC, )  
10 SERIES 6408 HILLSIDE BROOK; AND )  
HAMPTON & HAMPTON COLLECTIONS, )  
11 LLC, )  
12 Defendants. )

**CERTIFIED  
COPY**

13  
14  
15 DEPOSITION OF EDDIE HADDAD  
16 30(b)(6) REPRESENTATIVE OF SATICOY BAY LLC,  
17 SERIES 6408 HILLSIDE BROOK  
18 Taken on Monday, August 29, 2016  
19 At 1:10 p.m.  
20 At All-American Court Reporters  
21 1160 N Town Center Drive  
22 Suite 300  
23 Las Vegas, Nevada  
24  
25 REPORTED BY: SHIFRA MOSCOVITZ, CCR NO. 938

Eddie Haddad August 29, 2016  
30(b)(6) Representative of Saticoy Bay LLC, Series 6408 Hillside Brook

Page 2

1 APPEARANCES:

2 For Bank of America, N.A.:

3 WILLIAM HADDAS, ESQ.  
4 AKERMAN, LLP  
5 1160 Town Center Drive  
6 Suite 330  
7 Las Vegas, Nevada 89144  
8 (702) 634-5000

9 For Saticoy Bay, LLC, Series, 6408 Hillside Brook

10 MICHAEL BOHN, ESQ.  
11 LAW OFFICES OF MICHAEL F. BOHN  
12 376 East Warm Springs Road  
13 Suite 140  
14 Las Vegas, Nevada 89119  
15 (702) 642-3113

16 For Mountain Gate Homeowners' Association:

17 DAVID A. MARKMAN, ESQ.  
18 LIPSON NEILSON COLE SELTZER GARIN, P.C.  
19 9900 Covington Cross Drive  
20 Suite 120  
21 Las Vegas, Nevada 89144  
22 (702) 382-1500

23  
24  
25

1 Q. And do you have a specific return on  
2 investment that you are looking for on these  
3 properties?

4 A. Nothing that I can discuss with you, that  
5 would be a trade secret, as well.

6 plaintiff's attorney: Off the record.

7 (Whereupon, an off the record discussion  
8 was held.)

9 Q. All right. Do you ever have any buyers  
10 lined up for these properties before you purchase  
11 them?

12 A. No.

13 Q. Do you ever contact HOA's directly to ask  
14 about properties that are coming up?

15 A. No.

16 Q. How about that any HOA's ever contact you  
17 directly to say, hey, there is some properties for  
18 sale?

19 A. No.

20 Q. So this collection company, Hampton and  
21 Hampton, other than the methods you talked about  
22 earlier about the Nevada Legal News and the recorded  
23 document, does Hampton and Hampton ever reach out to  
24 you in any way to advertise?

25 A. No.



1 CERTIFICATE OF REPORTER

2

3 I, Shifra Moscovitz, Certified Court Reporter,  
4 State of Nevada, do hereby certify:


5 That I reported the deposition of EDDIE HADDAD,  
6 commencing on Monday, August 29, 2016, at 1:10 p.m.

7 That prior to being deposed, the witness was duly  
8 sworn by me to testify to the truth. That I thereafter  
9 transcribed my said shorthand notes into typewriting and  
10 that the typewritten transcript is a complete, true and  
11 accurate transcription of my said shorthand notes. That  
12 prior to the conclusion of the proceedings, the reading and  
13 signing was not requested by the witness or a party.

14 I further certify that I am not a relative or  
15 employee of counsel of any of the parties, nor a relative or  
16 employee of the parties involved in said action, nor a  
17 person financially interested in the action.

18 In witness whereof, I hereunto subscribe my name  
19 at Las Vegas, Nevada, this 4th day of September, 2016.

20

21   
SHIFRA MOSCOVITZ, CCR No. 938

22

23

24

25

# Exhibit F

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 \* \* \* \* \*  
4 U.S. BANK NATIONAL )  
5 ASSOCIATION, AS TRUSTEE FOR )  
6 THE CERTIFICATEHOLDERS OF ) Case No.:  
7 HARBORVIEW MORTGAGE LOAN ) 2:16-cv-03009-RFB-CWH  
8 TRUST 2005-10, MORTGAGE LOAN )  
9 PASSTHROUGH CERTIFICATES, )  
10 SERIES 2005-10, )  
11 Plaintiff, )  
12 vs. )  
13 CAPAROLA AT SOUTHERN )  
14 HIGHLANDS HOMEOWNERS )  
15 ASSOCIATION AND SATICOY )  
16 BAY LLC SERIES 10777 VESTONE )  
17 ST., )  
18 Defendants. )  
19  
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**CERTIFIED  
COPY**

16 DEPOSITION OF EDDIE HADDAD  
17 30(b)(6) REPRESENTATIVE FOR SATICOY BAY, LLC  
18 SERIES 10777 VESTONE ST.  
19 Taken on Thursday, July 27, 2017  
20 At 1:15 p.m.  
21 Taken at 1160 North Town Center Drive  
22 Suite 300  
23 Las Vegas, Nevada  
24  
25 Reported By: Terri M. Hughes, CCR No. 619

1 prior?

2 A. Sounds about right.

3 Q. Okay. If you could remember, if you can recall  
4 back to the time, so about five months after that decision  
5 came out, did you believe that the SFR decision resolved  
6 the issues relating to the disputes between the lenders  
7 and the HOA purchasers?

8 A. Yes.

9 Q. At that time did you believe that the first Deed  
10 of Trust holders had any defenses to getting title in  
11 first priority?

12 A. Not valid ones.

13 Q. Okay. Do you still own this property through this  
14 trust?

15 A. The LLC Series owns it, yes.

16 Q. I meant to say the LLC, not the trust. Thank you.

17 Prior to purchasing a property, do you ever reach  
18 out to the HOA directly for information regarding the  
19 property?

20 A. No.

21 Q. What about the HOA trustee? So here that would be  
22 Alessi & Koenig.

23 A. No.

24 Q. Prior to purchasing a property, is it normally  
25 your practice to take a look at the CC&Rs that are

# Exhibit G

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 \* \* \* \* \*  
4  
5 SATICOY BAY, LLC 10727 )  
MASON HILL AVE, ) Case No. A-14-703204-C  
6 ) Dept. No. I  
Plaintiff, )  
7 )  
vs. )  
8 )  
BANK OF AMERICA, N.A.; )  
9 NATIONAL DEFAULT SERVICING )  
CORPORATION; and MANCHESTER )  
10 PARK HOMEOWNERS )  
ASSOCIATION, )  
11 )  
Defendants. )  
12 )  
13

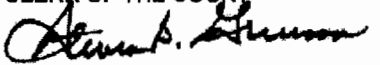
**CERTIFIED  
COPY**

14 DEPOSITION OF EDDIE HADDAD  
15 30(b)(6) REPRESENTATIVE OF SATICOY BAY, LLC 10727 MASON HILL AVE.  
16 Taken on Wednesday, December 9, 2015  
17 At 2:49 p.m.  
18 Taken at All-American Court Reporters  
19 1160 North Town Center Drive  
20 Suite 300  
21 Las Vegas, Nevada  
22  
23  
24  
25 Reported by: Sarah Safier, CCR No. 808

1 Q Okay. Do you have an estimate amount?  
2 A I would not remember.  
3 Q Generally, in your experience, do you recall  
4 how many people -- bidders would have attended the  
5 sale?  
6 A 20 to 100.  
7 Q Do you recall who conducted this sale?  
8 A I do not recall.  
9 Q It looks like on the Foreclosure Deed that  
10 the sale was conducted by Nevada Association  
11 Services; is that correct?  
12 A Yes, correct, or their agent, I'm not sure.  
13 Q Sure. Have you ever had any communication  
14 with Nevada Association Services prior to a  
15 foreclosure sale?  
16 A No.  
17 Q Do you have any written agreements or  
18 contracts with Nevada Association Services?  
19 A I do not.  
20 Q Have you ever spoken with anyone from the  
21 HOA with respect to this property prior to the sale?  
22 A I have not.  
23 Q Do you have any written agreements or  
24 contracts with the HOA?  
25 A I do not.

# Exhibit H





1 **RTRAN**

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 PARADISE HARBOR TRUST PLACE, )

6 Plaintiff, )

CASE NO. A707392

7 vs. )

DEPT. NO. XXVIII

8 US NATIONAL BANK ASSOCIATION, )

9 Defendant. )

13 BEFORE THE HONORABLE RONALD ISRAEL,

14 DISTRICT COURT JUDGE

15 WEDNESDAY, NOVEMBER 15, 2017

16 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 1**

19 APPEARANCES:

20 For the Plaintiffs: RICHARD VILKIN

21 For the Defendants: DARREN BRENNER  
22 REX GARNER

23 RECORDED BY: JUDY CHAPPELL, DISTRICT COURT  
24 TRANSCRIBED BY: MATTHEW KENNEDY, CSR No. 13822

1           A     Yes. So four times a year I would go on the  
2     Treasurer's office website and determine what is outstanding.  
3     If there's a bill that is due to the County Treasurer's  
4     office, then that would be paid immediately before the  
5     deadline to mitigate any damages.

6           Q     Okay. Has the trust ever disputed with the  
7     Treasurer the amount that has been taxed or the valuation that  
8     the Treasurer put on the property from which it calculated  
9     that tax?

10          A     No.

11          Q     The -- and before you bid on this property, did you  
12     ask the record beneficiary of the deed of trust whether it had  
13     made a payment or attempted to make a payment toward the HOA?

14          A     I don't recall in this particular instance, but I  
15     can recall generally speaking where I have picked up the phone  
16     to try to call a bank and they say, "Do you have a social  
17     security number? Are you the borrower?" And when the answer  
18     is no, "I'm sorry. We cannot discuss the loan with you."

19          Q     Okay. Is that something you did with a lot of  
20     properties?

21          A     I've done it several times. Yes. Kind of sort of  
22     like what you were questioning -- the collection company --  
23     FDCPA or whatever. You know, "I'm sorry. There's  
24     confidentiality. We cannot discuss the borrower's loan with

1 Q So then if I were to ask you did you ask the HOA or  
2 NAS if the bank had made any payment toward that lien, what  
3 would your answer be?

4 A Well, first of all, I mean, when you say HOA or NAS,  
5 it would be an authorized agent that would have held the sale.  
6 I don't know who the authorized agent was at this time, so  
7 that authorized agent could have been an employee of Nevada  
8 Legal News. So possibly there's no way to ask an authorized  
9 agent that's doing a sale whether it's NRS 107 or 116 because  
10 they're just not going to have that information.

11 Q Okay.

12 A You wait for the announcement to be made and if it's  
13 made, you know, or if it's not made. And then also, you know,  
14 these sales go on and on. There's so many of the sales. You  
15 know, it's impossible to interrupt the auctioneer on any  
16 particular property and say, you know -- because nobody wants  
17 to get ejected from the sale for --

18 Q Let me try --

19 A -- disrupting the sale.

20 Q Let me try it a different way. Did you talk to  
21 Nevada Legal News about this property before you bid on it?

22 A No. I'm sure -- I'm sure --

23 Q Did you talk to the HOA about this property before  
24 you bid on it?

1           A     No. I'm sure I would not have.

2           Q     Did you talk to NAS about this property before you

3     bid on it?

4           A     I'm not sure I would not have.

5           Q     Okay. And the fact that you didn't have any

6     information other than what you gleaned from public records

7     did not prevent you from bidding because you were the winning

8     bidder.

9           A     Yes, that is correct.

10          Q     And the -- the public records that you look at on

11     the Clark County Recorder's website, that also shows you

12     whether or not there is a deed of trust recorded on this

13     property; correct?

14          A     Yes, that is correct.

15          Q     And if you want to get a copy of that deed of trust,

16     you know how to do that?

17          A     Correct.

18          Q     And this property was purchased for long-term rental

19     hold and possible resale; correct?

20          A     Investment purposes.

21          Q     Has the property been rented to anyone during the

22     time that either Goldstone Avenue Trust or the Plaintiff here,

23     Paradise Harbor Trust, has owned it?

24          A     Yes, I'm sure it has.

# Exhibit I

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
376 E. Warm Springs Rd., Ste. 140  
4 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX  
5 Attorney for defendant Saticoy Bay LLC  
Series 2080 Artistic Flair Walk  
6

RECEIVED  
DEPOSITED  
SEP 2 2016  
SEP 26 2016

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

9 BANK OF AMERICA, N.A.,

CASE NO.: 2:16-CV-00438

10 Plaintiff,

11 vs.

12 INSPIRADA COMMUNITY ASSOCIATION;  
13 SATICOY BAY LLC SERIES 2080 ARTISTIC  
FLAIR WALK; LEACH, JOHNSON, SONG &  
14 GRUCHOW,

15 Defendants.

16 SATICOY BAY LLC SERIES 2080 ARTISTIC  
FLAIR WALK,

17 Counterclaimant,

18 vs.

19 BANK OF AMERICA, N.A.,

20 Counterdefendant.  
21

22 **DEFENDANT, SATICOY BAY, LLC SERIES 2080 ARTISTIC FLAIR WALK'S**  
23 **ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

24 Comes now defendant, Saticoy Bay LLC Series 2080 Artistic Flair Walk, by and through its  
attorney, Michael F. Bohn, Esq., answers plaintiff's interrogatories as follows:

25 **INTERROGATORY NO. 1:**

26 Identify any person who assisted in responding to BANA's requests for production of documents,  
27 requests for admissions, and these interrogatories, including identifying the specific requests or  
28 interrogatories with which that person assisted.

- 1 (iii) the frequency, term or period of rental payments,  
2 (iv) the amount of the periodic payments, and,  
3 (v) the total amount of rent received/collected.

4 **ANSWER TO INTERROGATORY NO. 17:**

5 See answer to interrogatory no. 15.

6 **INTERROGATORY NO. 18:**

7 Identify all agreements, written or oral, between you and either or both the HOA Trustee and/or  
8 the HOA (including any tri-party agreements) and state the terms of the agreement and identify any  
9 writing memorializing it.

10 **ANSWER TO INTERROGATORY NO. 18:**

11 None.

12 **INTERROGATORY NO. 19:**

13 Identify all agreements, written or oral, between you and all other persons or entities regarding  
14 the Property, the HOA Lien and/or the HOA Foreclosure Sale. Your response should include all  
15 ~~agreements that in any way affect the Property, the HOA Lien or the HOA Foreclosure Sale, whether or~~  
16 ~~not the Property, the HOA lien, or the HOA Foreclosure Sale is/are mentioned in the agreement.~~

17 **ANSWER TO INTERROGATORY NO. 19:**

18 None.

19 **INTERROGATORY NO. 20:**

20 Describe all communications between you and all persons or entities concerning the Property, the  
21 HOA Foreclosure Sale, the HOA Lien, including the date of the communication, the parties to the  
22 communication, and the substance of the communication.

23 **ANSWER TO INTERROGATORY NO. 20:**

24 None.

25 **INTERROGATORY NO. 21:**

26 Identify all properties you purchased at foreclosure sale in the five years before the HOA  
27 Foreclosure Sale to present, including the property address, the foreclosing entity, date and amount of  
28 each purchase.

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VERIFICATION

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

Eddie Haddad, being first duly sworn, deposes and says:

That he is the defendant's person most knowledgeable in the above entitled action; that he has read the foregoing answers to interrogatories and knows the contents thereof; that the same is true of his own knowledge and information, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

Eddie Haddad, pmk for defendant,  
Saticoy Bay LLC Series 2080 Artistic Flair Walk

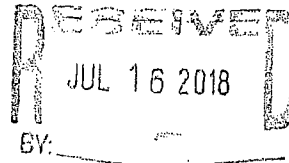
SUBSCRIBED and SWORN to before me  
this 21 day of September, 2016.



*Magdalena Lopez*  
NOTARY PUBLIC in and for said  
County and State



# Exhibit J



1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
ADAM R. TRIPPIEDI, ESQ.  
3 Nevada Bar No.: 12294  
[atrippiedi@bohnlawfirm.com](mailto:atrippiedi@bohnlawfirm.com)  
4 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
5 2260 Corporate Circle, Suite 480  
Henderson, Nevada 89074  
6 (702) 642-3113/ (702) 642-9766 FAX

7 Attorney for defendant Saticoy Bay LLC Series  
18 Via Visione 10104  
8

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11  
12 BANK OF AMERICA, N.A.

13 Plaintiff,

14 vs.

15 ESTATES-UNIT OWNERS' ASSOCIATION;  
HAMPTON AND HAMPTON COLLECTIONS  
16 LLC; and SATICOY BAY LLC SERIES 18  
VIA VISIONE 10104

17 Defendants.  
18

CASE NO.: 2:18-cv-00384-RFB-NJK

19 **DEFENDANT, SATICOY BAY LLC SERIES 18 VIA VISIONE 10104'S**  
20 **ANSWERS TO PLAINTIFF'S INTERROGATORIES**

21 Comes now, Saticoy Bay LLC Series 18 Via Visione 10104, by and through its attorney, Michael  
F. Bohn, Esq., answers plaintiff's interrogatories as follows:

22 **INTERROGATORY NO. 1:**

23 Identify any person who assisted in responding to BANA's requests for production of documents,  
24 requests for admissions, and these interrogatories, including identifying the specific requests or  
25 interrogatories with which that person assisted.

26 **ANSWER TO INTERROGATORY NO. 1:**

27 Eddie Haddad, c/o Law Offices of Michael F. Bohn, Esq., LTD, 2260 Corporate Circle, Suite 480,  
28 Henderson, Nevada 89074.

1 **INTERROGATORY NO. 20:**

2 Identify all agreements, written or oral, between you and all other persons or entities regarding  
3 the Property, the HOA Lien and/or the HOA Foreclosure Sale. Your response should include all  
4 agreements that in any way affect the Property, the HOA Lien or the HOA Foreclosure Sale, whether or  
5 not the Property, the HOA lien, or the HOA Foreclosure Sale is/are mentioned in the agreement.

6 **ANSWER TO INTERROGATORY NO. 20:**

7 None.

8 **INTERROGATORY NO. 21:**

9 Describe all communications between you and all persons or entities concerning the Property, the  
10 HOA Foreclosure Sale, the HOA Lien, including the date of the communication, the parties to the  
11 communication, and the substance of the communication.

12 **ANSWER TO INTERROGATORY NO. 21:**

13 None.

14 **INTERROGATORY NO. 22:**

15 Identify all properties you purchased at foreclosure sale in the five years before the HOA  
16 Foreclosure Sale to present, including the property address, the foreclosing entity, date and amount of  
17 each purchase.

18 **ANSWER TO INTERROGATORY NO. 22:**

19 See list of properties owned by Saticoy Bay attached hereto.

20 **INTERROGATORY NO. 23:**

21 Explain how you learned of the HOA Foreclosure Sale and identify all related communications  
22 and documents or writings.

23 **ANSWER TO INTERROGATORY NO. 23:**

24 Nevada Legal News or the internet.

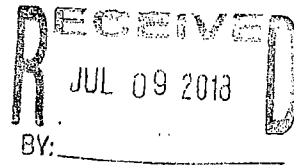
25 **INTERROGATORY NO. 24:**

26 Explain how you determined what amount to bid at the HOA Foreclosure Sale, including what  
27 was your maximum bid and how you determined that amount.

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# Exhibit K



1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 mbohn@bohnlawfirm.com  
ADAM R. TRIPIEDI, ESQ.  
3 Nevada Bar No.: 12294  
atrippiedi@bohnlawfirm.com  
4 LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.  
5 2260 Corporate Circle, Suite 480  
Henderson, Nevada 89074  
6 (702) 642-3113/ (702) 642-9766 FAX  
7 Attorney for defendant Saticoy Bay LLC Series  
18 Via Visione 10104  
8  
9

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 BANK OF AMERICA, N.A.  
13 Plaintiff,

CASE NO.: 2:18-cv-00384-RFB-NJK

14 vs.

15 ESTATES-UNIT OWNERS' ASSOCIATION;  
HAMPTON AND HAMPTON COLLECTIONS  
16 LLC; and SATICOY BAY LLC SERIES 18  
VIA VISIONE 10104

17 Defendants.  
18

19 **DEFENDANT, SATICOY BAY LLC SERIES 18 VIA VISIONE 10104'S**  
**RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS**

20 Comes now, Saticoy Bay LLC Series 18 Via Visione 10104, by and through its attorney, Michael  
21 F. Bohn, Esq., hereby responds to the plaintiff's requests for admissions as follows:

22 **REQUEST FOR ADMISSION NO. 1:**

23 Admit you are not a citizen of North Carolina.

24 **RESPONSE TO REQUEST NO. 1:**

25 Admit

26 **REQUEST FOR ADMISSION NO. 2:**

27 Admit, from September 2, 2010 to the present, you received income derived from properties you  
28 purchased at foreclosure sales held pursuant to NRS 116.31162.

1 **RESPONSE TO REQUEST NO. 2:**

2 Deny.

3 **REQUEST FOR ADMISSION NO. 3:**

4 Admit that you attended the HOA Foreclosure Sale.

5 **RESPONSE TO REQUEST NO. 3:**

6 Admit.

7 **REQUEST FOR ADMISSION NO. 4:**

8 Admit that you were the highest bidder on the Property at the HOA Foreclosure Sale.

9 **RESPONSE TO REQUEST NO. 4:**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 5:**

12 Admit that, in the 30 days preceding the HOA Foreclosure Sale, you identified properties that  
13 would be available for sale at auction by the HOA within a month of the HOA Foreclosure Sale date.

14 **RESPONSE TO REQUEST NO. 5:**

15 Objection, vague.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that, on or before September 2, 2014 you had knowledge that the Property would be placed  
18 up for auction.

19 **RESPONSE TO REQUEST NO. 6:**

20 Deny. Date of auction was September 2, 2015.

21 **REQUEST FOR ADMISSION NO. 7:**

22 Admit that prior to the HOA Foreclosure Sale, you sought information pertaining to the fair  
23 market value of the Property.

24 **RESPONSE TO REQUEST NO. 7:**

25 Admit.

26 **REQUEST FOR ADMISSION NO. 8:**

27 Admit that you communicated with the HOA Trustee regarding the Property prior to the HOA  
28 Foreclosure Sale.

1 **RESPONSE TO REQUEST NO. 8:**

2 Deny.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that, prior to the HOA Foreclosure Sale, you communicated with the HOA regarding the  
5 HOA Foreclosure Sale.

6 **RESPONSE TO REQUEST NO. 9:**

7 Deny.

8 **REQUEST FOR ADMISSION NO. 10:**

9 Admit that, prior to the HOA Foreclosure Sale, you had an agreement with the HOA or HOA  
10 Trustee to purchase some or any part of the HOA's rights in the HOA Lien.

11 **RESPONSE TO REQUEST NO. 10:**

12 Deny.

13 **REQUEST FOR ADMISSION NO. 11:**

14 Admit that before you acquired your interest in the Property, you reviewed publicly recorded  
15 documents on file with the Clark County Recorder's office that related to the Property.

16 **RESPONSE TO REQUEST NO. 11:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 12:**

19 Admit that before you acquired your interest in the Property, you knew the Deed of Trust had been  
20 recorded against the Property.

21 **RESPONSE TO REQUEST NO. 12:**

22 Admit.

23 **REQUEST FOR ADMISSION NO. 13:**

24 Admit that before you acquired your interest in the Property, you believed the Deed of Trust had  
25 been recorded against the Property.

26 **RESPONSE TO REQUEST NO. 13:**

27 Admit.

28 ...



# Exhibit L

RECEIVED FEB 01 2019

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
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3 Nevada Bar No.. 12294  
[atrippiedi@bohnlawfirm.com](mailto:atrippiedi@bohnlawfirm.com)  
4 NIKOLL NIKCI, ESQ.  
Nevada Bar No.: 10699  
5 [nnikci@bohnlawfirm.com](mailto:nnikci@bohnlawfirm.com)  
LAW OFFICES OF  
6 MICHAEL F. BOHN, ESQ., LTD.  
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7 Henderson, Nevada 89074  
(702) 642-3113/ (702) 642-9766 FAX  
8  
9 Attorney for defendant  
Saticoy Bay LLC Series 3237 Perching Bird

10  
11  
12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS SERVICING,  
15 LP FKA COUNTRYWIDE HOME LOANS  
SERVICING, LP

16 Plaintiff,

17 vs.

18 ALLIANTE MASTER ASSOCIATION;  
SATICOY BAY LLC SERIES 3237 PERCHING  
19 BIRD; and NEVADA ASSOCIATION  
SERVICES, INC.,

20 Defendants.

CASE NO.: 2:16-CV-00962

**DEFENDANT, SATICOY BAY LLC  
SERIES 3237 PERCHING BIRD'S  
RESPONSES TO PLAINTIFF'S  
REQUESTS FOR ADMISSIONS**

21 And all related matters.  
22

23 Comes now, Saticoy Bay LLC Series 3237 Perching Bird, by and through its attorney, Michael  
24 F. Bohn, Esq., and hereby responds to the plaintiff's requests for admissions as follows:

25 **REQUEST FOR ADMISSION 1:**

26 Admit you are not a citizen of North Carolina.

27 **RESPONSE TO REQUEST NO. 1:**

28 Admit.

1 **REQUEST FOR ADMISSION 8:**

2 Admit that you communicated with the HOA Trustee regarding the Property prior to the HOA  
3 Foreclosure Sale.

4 **RESPONSE TO REQUEST NO. 8:**

5 Deny.

6 **REQUEST FOR ADMISSION 9:**

7 Admit that, prior to the HOA Foreclosure Sale, you communicated with the HOA regarding the  
8 HOA Foreclosure Sale.

9 **RESPONSE TO REQUEST NO. 9:**

10 Deny.

11 **REQUEST FOR ADMISSION 10:**

12 Admit that, prior to the HOA Foreclosure Sale, you had an agreement with the HOA or HOA  
13 Trustee to purchase some or any part of the HOA's rights in the HOA Lien.

14 **RESPONSE TO REQUEST NO. 10:**

15 Deny.

16 **REQUEST FOR ADMISSION 11:**

17 Admit that before you acquired your interest in the Property, you reviewed publicly recorded  
18 documents on file with the Clark County Recorder's office that related to the Property.

19 **RESPONSE TO REQUEST NO. 11:**

20 Admit.

21 **REQUEST FOR ADMISSION 12:**

22 Admit that before you acquired your interest in the Property, you knew the Deed of Trust had been  
23 recorded against the Property.

24 **RESPONSE TO REQUEST NO. 12:**

25 Admit.

26 **REQUEST FOR ADMISSION 13:**

27 Admit that before you acquired your interest in the Property, you believed the Deed of Trust had  
28 been recorded against the Property.

# Exhibit M

**MOT**

**RYAN ALEXANDER**

Nevada Bar No. 10845

THE FIRM, P.C.

200 East Charleston Boulevard

Las Vegas, NV 89104

Phone: (702) 222-3476

Fax: (702) 252-3476

*Attorney for Debtor*

[ryan@thefirm-lv.com](mailto:ryan@thefirm-lv.com) (E-mail)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In Re:  
PARADISE HARBOR PLACE TRUST  
  
Debtor.

Case No.: BK-S-12-20213-BTB  
Hon. Bruce T. Beesely  
Chapter 11

**MOTION TO USE CASH  
COLLATERAL *NUNC PRO TUNC***

**Hearing Date: October 16, 2012  
Time of Hearing: 1:30 PM**

COME NOW **PARADISE HARBOR PLACE TRUST**, ("Debtors"), the debtors and debtors-in-possession in the above-captioned chapter 11 case, hereby move the Court for an Order authorizing the Debtors' use of cash collateral *nunc pro tunc*. This Motion is based on the Memorandum of Points and Authorities incorporated hereto and the Declaration of the Debtors.

**MEMORANDUM OF POINTS OF AUTHORITIES**

**A. Background Facts**

1. Debtors filed their voluntary petition under Chapter 11 of the United States Bankruptcy Code on September 4, 2012.
2. Debtors own the real properties located at the following residences and described below:
  - i. **2088 Club Crest Way Henderson NV 89014** – Investment Property;
  - ii. **2725 Echo Springs St Las Vegas NV 89156** – Investment Property;

- iii. **3984 Meadow Foxtail Dr Las Vegas NV 89122** – Investment Property;
- iv. **6188 Stone Hollow St Las Vegas NV 89156** – Investment Property;
- v. **8904 Goldstone Ave Las Vegas NV 89143** – Investment Property;
- vi. **1704 Pacific Breeze Dr Las Vegas NV 89144** – Investment Property;
- vii. **2601 Vendange Place Henderson NV 89044** – Investment Property;
- viii. **3728 Lodina Court Las Vegas NV 89141** – Investment Property;
- ix. **5005 Paradise Harbor Place North Las Vegas NV 89031** – Investment Property;
- x. **5308 La Quinta Hills St North Las Vegas NV 89081** – Investment Property;
- xi. **6420 Indian Peak Court North Las Vegas NV 89084** – Investment Property and

The properties listed above are hereinafter referred to as the “Rental Properties.” The Debtor is a Trust that owns all rental properties. The Trustee for this Trust is Resources Group, LLC, and Resources Group LLC manages the collection of rental income, as well as the day-to-day operations for the rental properties for this Trust. The sole owner of Resources Group, LLC and Grantor of the Trust is Mr. Iyad (Eddie) Haddad. Mr. Haddad funds the Trust, which then purchases junior liens through the Trustee’s Sales held at Nevada Legal News, and thus acquires ownership of the properties, subject to the first mortgage lien on the properties. Once the properties are ready for occupancy, Resources Group LLC will locate a tenant and rent the properties. The rental properties are all actively leased as of the date of this motion and generate approximately \$14,995.00 gross rental income per month. Described on Exhibit “A” is Debtors’ estimated income from all sources, along with their expenses, including the proposed mortgage payments on the rental properties.

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- 1 3. Each of the above-referenced properties was purchased through auction via a secondary,  
2 utility, or HOA lien, and is subject to the first mortgage. With liens totaling  
3 \$2,907,550.00, the real properties have a combined fair market value of approximately  
4 \$1,249,000.00, leaving \$1,658,550.00 under secured debt. See Bankruptcy Schedules A  
5 and D.  
6

7 **B. Proposed Use of Cash Collateral**

- 8 4. The Debtors, as debtors-in-possession, are authorized to use property of the estate in the  
9 ordinary course of business. 11 U.S.C. § 363(c). As the mortgage holder, or secured  
10 creditor, the income derived from their rental properties constitutes the mortgage  
11 companies' "cash collateral."  
12  
13 5. A Motion to Value Collateral, "Strip Off" and Modify Rights of Unsecured Creditors  
14 Pursuant to 11 U.S.C. Section 506(a) and Section 1123 for Debtors' investment properties  
15 will soon be filed, and will reduce Debtors proposed secured mortgage obligations to  
16 \$6328.00 per month.  
17  
18 6. Debtors are seeking an order authorizing them to pay the foregoing necessary operating  
19 expenses from the cash collateral pending confirmation of its plan of reorganization.  
20 These expenses are necessary to preserve their real properties, to maintain an on-going  
21 investment business concern, and to keep their rental business in good operational order.  
22  
23 7. The value of the Debtors' assets can only be maximized through continued operations and  
24 on-going rental of the rental properties. Without use of cash collateral, the Debtors'  
25 operations cannot continue. In addition, continuing operations will protect and preserve  
26 the position of the creditor mortgage companies.  
27

28 **D. The Debtors' Reorganization Goals**

1 8. Like many other individual Chapter 11 debtors, Debtors' primary purpose of  
2 reorganization is to adjust the valuation of their property and modify the obligations of  
3 their existing liens. The Debtors' use of cash collateral is vital to maintaining the value  
4 of the Debtors' assets until the Debtors have had a meaningful opportunity to present a  
5 Plan of Reorganization.  
6

7 **LEGAL DISCUSSION**

8 A. **The Debtors Should Be Authorized To Use Cash Collateral To Operate, Maintain**  
9 **and Preserve Its Business.**

10 The Debtors, as debtors-in-possession of the estate, have the duty to protect and conserve the  
11 rental properties in its possession for the benefit of creditors. *In re Devers*, 759 F.2d 751 (9th Cir.  
12 1985). The exact nature of the duty owed by a debtor-in-possession of the estate was defined in *In re*  
13 *Morning Star Ranch Resorts*, 64 B. R. 818 (Bkrcty. D. Colo. 1986):  
14

15 The debtor is a fiduciary and operates the property as a fiduciary for the parties in  
16 interest. He has obligations to operate the property in good fashion, to pay the  
17 expenses of operation and the cost of maintenance, to preserve and protect the  
18 property, and to account for the monies received and the expenses paid.

19 64 B.R. at 822. The Debtors herein have been operating the rental properties, paying the  
20 necessary operating and maintenance expenses and they propose that, with the Court's  
21 permission, they be allowed to continue to do so. The rental income total is approximately  
22 \$14,995.00. Debtor's monthly expenses total \$12,410.00, with proposed mortgage  
23 payments on the rentals of \$6328.00. Thus, absent any unforeseen major repairs, there is  
24 sufficient income being generated to pay the monthly operating expenses, including the  
25 revalued mortgage payments as a result of the anticipated approved motion to value  
26 collateral. Further, where a secured party is adequately protected under § 363, then the  
27 debtor may use the cash collateral for expenses, not only those directly related to the  
28 operation and maintenance of but also administrative expenses.



1 11 U.S.C. §363(c)(1). A debtor-in-possession has all of the rights and powers of a trustee with  
2 respect to property of the estate, including the right to use property of the estate in compliance with  
3 Section 363. See, 11 U.S.C. § 1107(a).

4  
5 “Cash collateral” is defined as “cash, negotiable instruments, documents of  
6 title, securities, deposit accounts or other cash equivalents in which the estate and an  
7 entity other than the estate have an interest. . . .” 11 U.S.C. §363(a). Section 363(c)(2)  
8 establishes a special requirement with respect to “cash collateral,” providing that the  
9 trustee or debtor-in-possession may use “cash collateral” under subsection (c)(1) if:

10 (A) each entity that has an interest in such cash collateral consents; or

11 (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance  
12 with the provisions of this section.

13 See, 11 U. S.C. § 363(c)(2)(A) and (B).

14 It is well settled that it is appropriate for a Chapter 11 debtor to use cash collateral for a  
15 reasonable period of time for the purpose of maintaining and operating its property. 11 U.S.C. §  
16 363(c)(2)(B); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981); *In re Tucson*  
17 *Industrial Partners*, 129 B.R. 614 (9th Cir. BAP 1991). In addition, where the debtor is operating a  
18 business, it is extremely important that the access to cash collateral be allowed in order to facilitate  
19 the goal of reorganization: “the purpose of Chapter 11 is to rehabilitate debtors and generally access  
20 to cash collateral is necessary to operate a business.” *In re Dynaco Corporation*, 162 B.R. 389  
21 (Bankr. D.N.H. 1993), *quoting In re Stein*, 19 B.R. 458, 459. The Debtors run a viable and operating  
22 entity, and believe that they will successfully reorganize and confirm a plan of reorganization. The  
23 continued operation of their investment properties are in the overwhelming best interests of the  
24 Debtors’ estate. If Debtors are unable to use cash collateral to operate their portfolio of investment  
25 properties, Debtors would obviously have to shut down immediately and liquidate. As described  
26 above, the Debtors should be permitted to operate and use cash collateral.  
27  
28

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order: (1) granting the Motion; (2) authorizing the Debtors to use cash collateral on the conditions set forth hereinabove; and (3) granting such other and further relief as the Court deems just and proper.

Dated this 4<sup>th</sup> day of September, 2012.

Respectfully submitted,  
/s/ Ryan Alexander /s/  
Ryan Alexander, Esq.

The Firm, PC  
200 E. Charleston Blvd. Las Vegas, NV 89104

**EXHIBIT "A"**  
**INCOME STATEMENT**  
**PROFIT AND LOSS**

Income		Expenses			
Rental	\$ 14,995.00	Proposed Mortgages	\$ 6,328.00	Insurance	\$ 767.00
TOTAL	\$ 14,995.00	Repair/Maint.	\$ 690.00	Taxes	\$ 1,553.00
		Utilities	\$ 760.00	Business Supplies	\$ 500.00
		HOA	\$ 642.00	Legal	\$ 50.00
		Management Fees	\$ 900.00	US Trustee Fee	\$ 220.00
		TOTAL:			

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*E-FILED*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

PARADISE HARBOR PLACE TRUST

DEBTORS.

CASE NO.: 12-20213-BTB  
Hon. Bruce T. Beesley

**[PROPOSED] ORDER GRANTING  
FIRST DAY MOTION TO USE CASH  
COLLATERAL**

**Hearing Date: October 16, 2012  
Time of Hearing: 1:30 PM**

The Motion to Use Cash Collateral (the "Motion") having come before this Court and the Motion having been served as shown by the Certificate of Service, Ryan Alexander of The Firm, PC appearing for PARADISE HARBOR PLACE TRUST, Debtors and Debtors-in-Possession (the "Debtors"), the Court having reviewed the Motion, and finding good cause, and that there is sufficient income to pay Adequate Protection Ordered payments under 11 USC 361, it is

ORDERED that the Debtors are authorized to use the income derived from their rental properties (the "Properties"), including but not limited to operation expenses, and other miscellaneous expense as stated below:

Income		Expenses			
Rental	\$ 14,995.00	Proposed Mortgages	\$ 6,328.00	Insurance	\$ 767.00
TOTAL	\$ 14,995.00	Repair/Maint.	\$ 690.00	Taxes	\$ 1,553.00
		Utilities	\$ 760.00	Business Supplies	\$ 500.00
		HOA	\$ 642.00	Legal	\$ 50.00
		Management Fee	\$ 900.00	US Trustee Fee	\$ 220.00
		TOTAL:			
		\$ 12,410.00			

ORDERED that as provided by Fed. R. Bankr. P. 7062, this Order shall be effective and enforceable immediately upon entry.

**ALTERNATIVE METHOD re: RULE 9021:**

In accordance with LR 9021, counsel submitting this document certifies as follows (check one)

- ☐ The court has waived the requirement of approval under LR 9021.
- ☐ No Parties appeared or filed written objections, and there is no trustee appointed in this case.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.
- ☐ I certify that this is a case under Chapter 7, 11 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Respectfully submitted,

/s/ Ryan Alexander /s/  
 Ryan Alexander, Esq.  
 NV Bar No. 10845

1 **OMSJ**  
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3 Nevada Bar No.: 4958  
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13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 DAISY TRUST, a Nevada trust,  
16  
17 Plaintiff,

18 vs.

19 EL CAPITAN RANCH LANDSCAPE  
20 MAINTENANCE ASSOCIATION, a domestic  
21 Nevada non-profit corporation,  
22  
23 Defendants.

\*\*\*\*\*

Case No: A-19-789674-C  
Dept. No: 14

**PLAINTIFF'S OPPOSITION TO EL  
CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION'S  
MOTION FOR SUMMARY JUDGMENT**

24 Plaintiff Daisy Trust ("Plaintiff"), by and through its attorneys, Roger P. Croteau &  
25 Associates, LTD., requests that the Court deny Defendant El Capitan Ranch Landscape  
26 Maintenance Association's (the "HOA") Motion for Summary Judgment (the "Motion"). This  
27 Opposition is made and based upon the attached Memorandum of Points and Authorities, the  
28 papers and pleadings on file herein, and any oral argument that this Honorable Court may entertain  
at the time of hearing of this matter.

Dated this June 10, 2021.  
ROGER P. CROTEAU & ASSOCIATES, LTD.  
/s/ Christopher L. Benner  
\_\_\_\_\_  
Roger P. Croteau, Esq.  
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Attorney for Plaintiff

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Nevada law, NRS 116 et seq., governs the collection of assessments, charges, fines and other sums that may be due in a common ownership interest community or homeowners' association concerning real property that comprise the members of the homeowners' association. In such a scheme, the developer generally establishes the Covenants, Conditions and Restrictions ("CC&Rs"), along with the general governing documents that are recorded when the common-interest community is formed and run with the real property so long as the homeowner's association is in existence. The filing and recording of the CC&Rs establish the priority date of collection subject to NRS 116.3116. As such, homeowners' associations have the right to charge real property owners within the common-interest community for assessments to cover the homeowner's associations' expenses as outlined in the CC&Rs for maintaining, governing and/or improving the community among other things. When the sums due pursuant to the CC&Rs are not paid, such as assessments and other expenses, the homeowner's association under NRS 116 et seq. may impose a lien against the real property which it governs, and thereafter foreclose upon that real property subject to the CC&Rs in a non-judicial foreclosure sale.

Though non-judicial foreclosure sales in the State of Nevada are generally governed by NRS 107 et seq.; however, the legislature in 1991 enacted NRS 116, as amended, to specifically address the special needs of homeowners' associations to enforce their liens against real property owners in the common-interest community to ensure the survival of the homeowner's association. Pursuant to NRS 116, certain unique modifications to the general statutory scheme of NRS 107

1 were enacted by the legislature. It is the unique features of NRS 116 et seq. that prompted  
2 Plaintiff's Complaint; specifically, the bifurcation of the Deed of Trust priority into two pieces  
3 creating two very different legal and economic implications: (1) super-priority and (2) sub-priority  
4 of the Deed of Trust secured by the real property.  
5

6 In the pre-2015 version of NRS 116.3116 effective at the relevant time in this case, it  
7 provides, in pertinent part:

8 NRS 116.3116 Liens against units for assessments.

9  
10 1. The association has a lien on a unit for any construction penalty that  
11 is imposed against the unit's owner pursuant to NRS 116.310305, any  
12 assessment levied against that unit or any fines imposed against the  
13 unit's owner from the time the construction penalty, assessment or fine  
14 becomes due. Unless the declaration otherwise provides, any penalties,  
15 fees, charges, late charges, fines and interest charged pursuant to  
16 paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are  
17 enforceable as assessments under this section. If an assessment is  
18 payable in installments, the full amount of the assessment is a lien from  
19 the time the first installment thereof becomes due.

20 2. A lien under this section is prior to all other liens and encumbrances  
21 on a unit except:

22 (a) Liens and encumbrances recorded before the recordation of the  
23 declaration and, in a cooperative, liens and encumbrances which the  
24 association creates, assumes or takes subject to;

25 (b) A first security interest on the unit recorded before the date on  
26 which the assessment sought to be enforced became delinquent or, in  
27 a cooperative, the first security interest encumbering only the unit's  
28 owner's interest and perfected before the date on which the assessment  
sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or  
charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph  
(b) to the extent of any charges incurred by the association on a unit  
pursuant to NRS 116.310312 and to the extent of the assessments for  
common expenses based on the periodic budget adopted by the  
association pursuant to NRS 116.3115 which would have become due  
in the absence of acceleration during the 9 months immediately



1 preceding institution of an action to enforce the lien, unless federal  
2 regulations adopted by the Federal Home Loan Mortgage Corporation  
3 or the Federal National Mortgage Association require a shorter period  
4 of priority for the lien. If federal regulations adopted by the Federal  
5 Home Loan Mortgage Corporation or the Federal National Mortgage  
6 Association require a shorter period of priority for the lien, the period  
7 during which the lien is prior to all security interests described in  
8 paragraph (b) must be determined in accordance with those federal  
9 regulations, except that notwithstanding the provisions of the federal  
10 regulations, the period of priority for the lien must not be less than the  
11 6 months immediately preceding institution of an action to enforce the  
12 lien. This subsection does not affect the priority of mechanics' or  
13 materialmen's liens, or the priority of liens for other assessments made  
14 by the association.

15 \*\*\*

16 In *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014) the Nevada Supreme

17 Court stated:

18 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into  
19 two pieces, a superpriority piece and a subpriority piece. The superpriority  
20 piece, consisting of the last nine months of unpaid HOA dues and  
21 maintenance and nuisance-abatement charges, is "prior to" a first deed of  
22 trust. The subpriority piece, consisting of all other HOA fees or  
23 assessments, is subordinate to a first deed of trust. See *SFR Investments*  
24 *Pool 1 v. U.S. Bank*, 334 P.3d at 411 ("SFR Investments").

25 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a  
26 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,  
27 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a  
28 Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the  
association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common  
expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which  
would have become due in the absence of acceleration during the 9 months immediately preceding  
institution of an action to enforce the lien. ..." NRS 116.3116(2)(c). In Nevada, when a  
homeowners association properly forecloses upon a lien containing a super-priority lien

1 component, such foreclosure extinguishes a Deed of Trust. If the homeowner's association does not  
2 properly foreclose on a super-priority homeowner's association lien or the super-priority portion is  
3 paid before the foreclosure sale, the homeowner's association foreclosure sale does not extinguish  
4 the Deed of Trust.

5         The facts as alleged in this Complaint deal with such a foreclosure that did not extinguish  
6 the Deed of Trust. As the court is aware, the statutory foreclosure scheme of NRS 116.3116 and  
7 related sections creates unique bifurcated priority liens related to the Deed of Trust. Under NRS  
8 107, non-judicial foreclosure sales where the bidders at NRS 107 sales have available public  
9 information regarding the priority of the deed of trust being foreclosed, the priority of the Deed of  
10 Trust at the homeowner's association foreclosure sale cannot be determined by a bidder at the  
11 homeowner's association foreclosure sale from a review of public information, record searches,  
12 title reports or other means commonly and regularly relied upon by bidders in NRS 107 sales.

13         Generally, foreclosure trustees in NRS 107 sales have no duty to the bidders of the property  
14 being foreclosed upon. As the HOA makes clear in the Motion, the Nevada Supreme Court has  
15 agreed that the HOA has no affirmative duty to inform bidders of a pre-sale tender of a  
16 superpriority amount of an assessment lien. The body of common law has developed from the  
17 precept that information exists in the public domain to conduct reasonable due diligence under the  
18 circumstances to properly inform a potential bidder, however, that information is not available  
19 under any circumstances to the bidder in a NRS 116 sale.

20         This case focuses on the duties and obligations owed by a homeowner's association by and  
21 through its agent, the foreclosure trustee to inform the bidders at the foreclosure sale as to the  
22 bifurcated status of the Deed of Trust secured by the property. The question is with inquiry from an  
23 NRS 116 bidder and certainly to the actual purchaser of the homeowner's foreclosure sale, does  
24 that homeowner's association and/or its foreclosure trustee have an obligation of good faith and  
25  
26  
27  
28

1 candor to the NRS 116 foreclosure bidders to disclose any attempted and/or actual tender of the  
2 super-priority lien amounts, thereby rendering the sale subject to the Deed of Trust or not?

3  
4 **STATEMENT OF FACTS**

5 Plaintiff is a Nevada trust: Resources Group, LLC, a Nevada limited liability company,  
6 as Trustee for the Plaintiff, is authorized to do business and is doing business in the County of  
7 Clark, State of Nevada.

- 8 1. Daisy Trust is the current owner of real property located at 8721 Country Pines  
9 Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) (the "*Property*"). See  
10 Complaint ¶3.  
11  
12 2. Daisy Trust acquired title to Property by Foreclosure Deed dated September 11, 2012, by  
13 and through a homeowners association lien foreclosure sale on September 5, 2012 ("*HOA*  
14 *Foreclosure Sale*"), conducted by Alessi & Koenig, LLC, a domestic limited liability  
15 company, authorized to do business and doing business in Clark County, State of Nevada,  
16 at the time of the HOA Foreclosure Sale, but as of the filing of this Complaint, the entity  
17 is "dissolved" ("*HOA Trustee*"), on behalf of El Capitan Ranch Landscape Maintenance  
18 Association, a Nevada domestic non-profit corporation ("*HOA*"). See Complaint ¶4.  
19  
20 3. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first  
21 deed of trust beneficiary's secured interest in the property, with one limited exception; a  
22 homeowner's association's lien is senior to a deed of trust beneficiary's secured interest  
23 "to the extent of any charges incurred by the association on a unit pursuant to NRS  
24 116.310312 and to the extent of the assessments for common expenses based on the  
25 periodic budget adopted by the association pursuant to NRS 116.3115 which would have  
26 become due in the absence of acceleration during the 9 months immediately preceding  
27 institution of an action to enforce the lien." NRS 116.3116(2)(c). See Complaint ¶11.  
28

4. On or about December 24, 1996, Patricia Butler, an unmarried woman, (*"the Former Owner"*) purchased the Property. See Complaint ¶13.
5. On or about December 22, 2005, the Former Owner obtained a loan and entered into a deed of trust with First Magnus Financial Corporation. (*"Magnus"* and/or *"Lender"*) recorded against the Property on January 10, 2006, for the loan amount of \$264,750.00 (the *"Deed of Trust"*). The Deed of Trust provides that Mortgage Electronic Registration Services (*"MERS"*) is beneficiary, as nominee for Lender and Lender's successors and assigns. The Deed of Trust was in the amount of \$264,750.00, and the Deed of Trust was recorded in the Clark County Recorder's office on January 10, 2006. See Complaint ¶14.
6. The Former Owner executed a Planned Unit Development Rider along with the Deed of Trust, effective as of December 22, 2005. See Complaint ¶15.
7. The Former Owner of the Property failed to pay to HOA all amounts due to pursuant to HOA's governing documents. See Complaint ¶16.
8. Accordingly, on March 31, 2010, HOA, through HOA Trustee, recorded a Notice of Delinquent Assessment Lien (*"HOA Lien"*). The HOA Lien stated that the amount due to the HOA was \$643.00, plus accruing assessments, interest, costs and attorney's fees. See Complaint ¶17.
9. On June 16, 2010, HOA, through HOA Trustee, recorded a Notice of Default and Election to Sell (*"NOD"*) against the Property. The NOD stated the amount due to the HOA was \$1,703.00 as of May 13, 2010, plus accruing assessments, interest, costs and attorney's fees. See Complaint ¶18.

10. On June 18, 2010, the HOA Trustee mailed the NOD to BAC Home Loans Servicing, LP, fka Countrywide Home Loans Bank, that eventually by merger was assigned to Bank of America, N.A. ("BANA"). See Complaint ¶19.
11. After the NOD was recorded, on June 16, 2010, BANA, by and through its agent, contacted the HOA Trustee and requested a ledger identifying the super- priority lien amount comprising of 9 months of delinquent assessments that were owed to the HOA prior to the filing of the HOA Lien ("*Super-Priority Lien Amount*"). See Complaint ¶20.
12. In response to BANA's request to the HOA Trustee of a ledger identifying the Super-Priority Lien Amount, the HOA Trustee provided an "amended demand on behalf of [the HOA]... through August 22, 2011" dated July 21, 2011, to BANA or its agent identifying that \$2,641.00 was due through August 22, 2011. See Complaint ¶21.
13. on September 23, 2010, BANA, through Miles, Bauer, Bergstom & Winter, LLP ("*Miles Bauer*"), provided a payment of \$58.50 to the HOA Trustee, which allegedly included payment of up to nine months of delinquent assessments prior to the HOA Lien comprising the Super-Priority Lien Amount (the "*Attempted Payment*"). See Complaint ¶22.
14. The HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$58.50. See Complaint ¶23.
15. On August 2, 2012, HOA Trustee, as agent for the HOA, recorded a Notice of Foreclosure Sale against the Property ("NOS"). The NOS provided that the total amount due the HOA was \$2,641.00 and set a sale date for the Property of September 5, 2012, at 2:00 P.M., to be held at 9500 W. Flamingo Road, Suite 205, Las Vegas, Nevada 89147. See Complaint ¶24.
16. On September 5, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded a Foreclosure Deed on September 11, 2012 ("HOA Foreclosure Deed"), which stated that the HOA Trustee sold the HOA's interest in

1 the Property to the Plaintiff at the HOA Foreclose Sale for the highest bid amount  
2 of \$3,700.00. See Complaint ¶25.

3 17. After the NOD was recorded; BANA, the purported holder of the Deed of Trust  
4 recorded against the Property, through its counsel, Miles Bauer, contacted HOA  
5 Trustee and HOA and requested adequate proof of the super priority amount of  
6 assessments by providing a breakdown of nine (9) months of common HOA  
7 assessments as of the HOA Lien in order for BANA to calculate the Super Priority  
8 Lien Amount in an ostensible attempt to determine the Super-Priority Lien  
9 Amount. See Complaint ¶27.

10 18. In none of the recorded documents, nor in any other notice recorded with the Clark  
11 County Recorder's Office, did the HOA and/or HOA Trustee specify or disclose that  
12 any individual or entity, including but not limited to BANA, had attempted to pay  
13 any portion of the HOA Lien in advance of the HOA Foreclosure Sale. See  
14 Complaint ¶28.

15 19. Plaintiff, through Mr. Haddad, appeared at the HOA Foreclosure Sale and presented  
16 the prevailing bid in the amount of \$3,700.00, thereby purchasing the Property for  
17 said amount. See Complaint ¶29.

18 20. Neither HOA nor HOA Trustee informed or advised the bidders and potential  
19 bidders at the HOA Foreclosure Sale, either orally or in writing, that any individual  
20 or entity had attempted to pay the Super-Priority Lien Amount. See Complaint ¶30.

21 21. BANA, and it's successor's in interest, thereafter alleged that the Attempted  
22 Payment of the Super-Priority Lien Amount served to satisfy and discharge the  
23 Super-Priority Lien Amount, thereby changing the priority of the HOA Lien vis a vis  
24 the Deed of Trust. See Complaint ¶33.

25 22. The information related to any Attempted Payment or payments made by Lender, the  
26 homeowner or others to the Super Priority Lien Amount was not recorded and would  
27 only be known by BANA, Lender, the HOA and HOA Trustees. See Complaint ¶39.  
28

1 23. Lender first disclosed BANA's Attempted Payment to the HOA Trustee in Lender's  
2 First Supplemental NRCP 16.1 Disclosure, electronically filed on February 19, 2016,  
3 in U.S. Bank N.A. v. Resources Group, Alessi & Koenig, and El Capitan HOA, filed  
4 in District Court, Clark County, Nevada as Case No. A-15-717806-C (the "*Case*"),  
5 plus three days for mailing providing a discovery date of February 22, 2016  
6 ("*Discovery*"). See Complaint ¶44.

7 24. As part of Plaintiff's practice and procedure in for NRS Chapter 116 foreclosure  
8 sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm whether  
9 the sale was going forward on the scheduled date; and in the context of an NRS  
10 Chapter 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the  
11 account. See Declaration of Eddie Haddad, attached as Exhibit 1 ("Declaration").

12 25. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to  
13 determine if the Property would in fact be sold on the date stated in the NOS, obtain  
14 the opening bid, so Plaintiff could determine the amount of funds necessary for the  
15 auction and inquire if any payments had been made; however, Plaintiff never  
16 inquired if the "Super-Priority Lien Amount" had been paid. See Declaration.

17 26. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment  
18 either having been attempted or made, Plaintiff would not purchase the Property  
19 offered in that HOA Foreclosure Sale. See Declaration.

## 20 LEGAL ARGUMENT

### 21 **A. Statement of the Law**

22 Pursuant to N.R.C.P. 56, two substantive requirements must be met before a court may  
23 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;  
24 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*  
25 *Equipment Corp.*, 108 Nev. 212,826 P.2d 570 (1992). Summary judgment is appropriate under  
26 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if  
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1 any, that are properly before the court demonstrate that no genuine issue of material fact exists,  
2 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724,  
3 731, 121 P.3d 1026, 1031 (2005) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57  
4 P.3d at 87 (2003)). In deciding whether these requirements have been met, the Court must first  
5 determine, in the light most favorable to the non-moving party "whether issues of material fact  
6 exist, thus precluding judgment by summary proceeding." *National Union Fire Ins. Co. of*  
7 *Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

9         The non-moving party is required, by affidavit or otherwise, to set forth specific facts  
10 demonstrating the existence of a genuine issue of material fact for trial or have summary judgment  
11 entered against it. *See Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.3d 588, 591 (1992)  
12 (citing *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 294, 662 P.2d 6710, 618-19 (1983)). An  
13 issue is "genuine" if the evidence is such that a reasonable jury, applying the applicable quantum  
14 of proof, could return a verdict for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477  
15 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986).

17         In determining whether a genuine issue of material fact exists before the trial court, the  
18 question is whether a reasonable person could conclude from the facts appearing in the record, and  
19 reasonable inferences drawn therefrom, that such issue of fact exists. *Nehls v. Leonard*, 97 Nev.  
20 325, 630 P.2d 258 (1981). Whether the fact is "material" depends on substantive case law as to  
21 whether its existence is relevant to the outcome of the disputed issue. *Anderson*, 477 U.S. 242 at  
22 248. The evidence offered by the non-moving party must be admissible, and he or she "is not  
23 entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Collins*,  
24 99 Nev. at 302, 662 P.2d at 621. In other words, the non-moving party must "do more than simply  
25 show that there is some metaphysical doubt" as to the operative facts. *Wood*, 121 Nev. 724, 121  
26 P.3d at 1031.  
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1 The Court should also deny the HOA's Motion as genuine issues of material fact remain,  
2 such that the HOA is not entitled to judgment as a matter of law.

3 **B. Plaintiff's Claim for Misrepresentation Applies to the HOA**

4 The HOA intentionally/negligently made the determination not to disclose the Attempted  
5 Payment despite its actual knowledge to the contrary. The Court in *Foster v. Dingwall*, 126 Nev.56,  
6 69 227 P.3d 1042,1052, 2010 LEXIS 5, 26, 126 Nev. Adv. Rep. 6 (2010) provided that the  
7 omission of a material fact such as the BANA Attempted Payment of the HOA Lien may be  
8 deemed to be a false representation which the HOA and HOA Trustee are bound by the mandates  
9 of NRS 116.1113 and NRS 113.130 to disclose to potential bidders under the obligation and duty  
10 of good faith and candor to disclose **upon reasonable inquiry from potential bidders** at the HOA  
11 Foreclosure Sale and/or the party conducting the sale with actual knowledge of certain material  
12 facts such intentional omission in not disclosing the Attempted Payment is equivalent to a false  
13 representation under the facts of this case. While the HOA cites a host of cases regarding their not  
14 being a duty to affirmatively disclose the Attempted Payment, these cases are inapposite where  
15 there is a reasonable inquiry, or there is a reasonable likelihood of a relevant factual question as to  
16 an inquiry.

17 Plaintiff has identified that the HOA, by and through its agent, the HOA Trustee,  
18 intentionally did not disclose the Attempted Payment at the HOA Foreclosure Sale. Unlike NRS  
19 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super and sub-priority lien portion of the  
20 Deed of Trust. Absent of the recording of any notice of payment of the Super Priority Lien  
21 Amount, as is mandated with the NRS 116 amendments in 2015, the only way Plaintiff and/or  
22 potential bidders at the HOA Foreclosure Sale would know if any party tendered the Super Priority  
23 Lien Amount and/or Attempted Payment is if the HOA and/or the HOA Trustee informs the  
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1 bidders of the Attempted Payment. It is clear from the facts of this case that the HOA Trustee was  
2 aware of the Attempted Payment.

3         Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with  
4 knowledge held by the HOA Trustee. In the Complaint, Plaintiff sets forth the duty, breach of that  
5 duty, improper purpose, failure to make a statement regarding the Attempted Payment, the material  
6 omission of the Attempted Payment, the breach of the obligation of good faith and candor, the  
7 failure to provide notice pursuant to NRS 113 *et seq.* and the damages suffered by Plaintiff.

8         In this case, the HOA, as principal for the HOA Trustee, is not guilty of a false  
9 representation, but they are guilty of intentionally not disclosing a material fact regarding the  
10 payment of the Attempted Payment concerning the Deed of Trust that they are required to do and  
11 thereby making a material omission of a fact subject to this claim. Mr. Haddad relied upon the non-  
12 disclosure of the Attempted Payment to indicate that no tender had been attempted or  
13 accomplished, and there is a question of fact as to whether the information regarding the Attempted  
14 Payment was withheld from Mr. Haddad after a reasonable inquiry.

15         The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure Sale  
16 intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding the  
17 Property and specifically the priority of the lien being foreclosed upon, and ultimately affected  
18 Plaintiff's decision whether to actually submit a bid on the Property or not, as set forth in Mr.  
19 Haddad's Declaration.

20         It is not Plaintiff's duty to prove that the HOA Trustee believed it had a duty to disclose the  
21 existence of a tender or believed that the rejection of the tender/Attempted Payment had any impact  
22 on its statutory right to foreclose on its super-priority lien. It is Plaintiff's claim that the HOA and  
23 the HOA Trustee had a duty to the bidding public to disclose information known to it upon  
24 **reasonable inquiry**, so Plaintiff and the other bidders could decide whether to purchase the  
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1 Property at the HOA Foreclosure Sale. The HOA and HOA Trustee intentionally, whether on a  
2 mistaken belief or not of the effectiveness of the tender, failed to disclose the Attempted Payment,  
3 so they would not chill the sale of the Property for their own economic gain. It is the reasonable  
4 inquiry, which the attached Declaration of Mr. Haddad states was his practice and procedure, and  
5 not an affirmative duty, that differentiates this matter from the Orders the HOA cites as dispositive  
6 in this matter.  
7

8 Furthermore, it was Plaintiff's practice and procedure that when Mr. Haddad would attend  
9 NRS 116 sales, at all times relevant to this case, Mr. Haddad would attempt to ascertain whether  
10 anyone had attempted to or did tender any payment regarding the homeowner association's lien.  
11

12 Plaintiff presented the facts and argument that it sought to ascertain whether a tender had  
13 occurred, or been attempted, as this information would play a prominent role in determining  
14 whether Plaintiff, through Mr. Haddad, would purchase an interest in any given property. See  
15 Exhibit 1. Mr. Haddad's affirmative efforts indicate that some steps were taken to obtain  
16 information regarding the sale via verbal communication. As set forth in the Declaration, it is likely  
17 that Mr. Haddad inquired of any "tender" at the time of the HOA Sale. This factual scenario,  
18 wherein Mr. Haddad verbally inquired as to the status of a "tender" in the matter, and a resulting  
19 response (or lack thereof) from the HOA or HOA Trustee that did not disclose the "tender" by the  
20 holder of the First Deed of Trust, would result in "supply[ing] false information" pursuant to  
21 *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 294, 400, 302 P.3d 1148, 1153 (2013), or  
22 making "a false representation" pursuant to *Nelson v. Heer*, 123 Nev. 217, 225 (2007). Likewise,  
23 this inquiry and lack of response differentiates this matter from the factual scenario contemplated  
24 by the Order set forth by the HOA in the Motion. Motion page 5 line 5 to 24.  
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1           **C. An HOA Foreclosure Deed Does Make Certain Representations Regardless of the**  
2           **“Without Warranty” Limitation.**

3           The HOA argues that the Property was sold at the HOA Foreclosure Sale “without  
4 warranty,” pursuant to NRS 116.31164(3)(a)...” See HOA’s Motion, page 6. The HOA and HOA  
5 Trustee have an obligation of good faith, candor and complying with all applicable law at the time  
6 of the HOA Foreclosure Sale which they collectively did not. The HOA and HOA Trustee cannot  
7 intentionally withhold information known only to the Former Owner, the HOA and HOA Trustee  
8 that materially, adversely affects, the Purchasers as defined under NRS 116, i.e. the Plaintiff, as to  
9 the value and nature of the bifurcated lien status of the Deed of Trust and the assessments. Plaintiff  
10 would concede that the HOA would not be liable for matters not specifically known to the HOA  
11 and HOA Trustee at the time of the HOA Foreclosure Sale that cannot be adduced by a public  
12 record review as occurs in NRS 107 foreclosure sales. However, in the instant case, the HOA and  
13 HOA Trustee are the actual parties with the information regarding the Attempted Payment and had  
14 an obligation to inform the Plaintiff. This fact alone constitutes sufficient proof of the HOA, by  
15 and through its agent, the HOA Trustee, to disclose the Attempted Payment to the Plaintiff and  
16 failing to comply with all requirements of law.

17           The HOA has a duty to disclose the Attempted Payment to a Purchaser, as defined in NRS  
18 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113 **upon an inquiry by the**  
19 **plaintiff, of which there is a question of fact as to whether such an inquiry occurred, with any**  
20 **such reasonable question of fact being sufficient to defeat the Motion.** At the time and place of  
21 the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, enters into a sale  
22 governed by a statute, NRS 116, by the function of the auction conducted by the HOA Trustee.  
23 Inherently, the material aspects of the factors affecting the lien priority of the secured debt that are  
24 only known solely to the HOA and HOA Trustee are material to the HOA Lien being foreclosed  
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1 upon and must be disclosed to the HOA Foreclosure Sale bidders. To infer otherwise, would  
2 destroy the statutory scheme of NRS 116 sales.

3 A common argument among all parties to the HOA litigation has been the low prices  
4 adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices  
5 have been driven by the mountain of litigation that has occurred over the last years seeking to  
6 define the rights and obligations of the various parties. To hold that the HOA does not have a duty  
7 to disclose information know only to the HOA and the HOA Trustee that materially affects the  
8 value of what a willing buyer would be willing to pay for the real property offered at auction that  
9 relates directly to the status and priority of the Deed of Trust. Essentially, the HOA is alleging that  
10 the HOA will sell to the highest cash bidder the real property without any way for the bidder to  
11 know if it will acquire the real property free and clear of the Deed of Trust or subject thereto. This  
12 would effectively forever destroy the HOA foreclosure sale process under NRS 116.3116.  
13  
14

15 **D. Plaintiff's Claims are not Time Barred.**

16 The Plaintiff has asserted three (3) causes of action: (1) Intentional, or Alternatively  
17 Negligent Misrepresentation; (2) NRS 116.1113 breach of duty of good faith, and (3) civil  
18 conspiracy among the HOA and the HOA Trustee. See Complaint. NRS 11.190(3)(d) governs  
19 Plaintiff's claim for "intentional, or alternatively negligent misrepresentation" and provides for a  
20 three (3) year statute of limitation for "an action for relief on the ground of fraud or mistake, but the  
21 cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party  
22 of the facts constituting the fraud or mistake." As outlined in detail herein, the Plaintiff discovered  
23 the intentional misrepresentation on February 22, 2016 when Plaintiff was served the First  
24 Supplemental NRCP 16.1 Disclosures in the Case (given the 3 days for mailing following the  
25 production date of February 19, 2016) . By computation, the NRS 11.190(3)(d) statute of limitation  
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1 in this matter would expire after February 22, 2019. Specifically, NRS 11.10(3)(d) provides  
2 specific language for the “discovery rule” that is applicable in this case.

3       Turning to breach of good faith claim under NRS 116.1113 and NRS 113 et seq. claims,  
4 Plaintiff argues that the discovery rule should apply to these causes of action due to the conduct of  
5 the HOA in this case. Pursuant to NRS 11.190(3)(a), a three (3) year statute of limitation applies to  
6 “an action upon a liability created by statute, other than a penalty or forfeiture.” Clearly, the  
7 obligation of “good faith” under NRS 116.1113, is a duty founded upon a statute that provides that  
8 “[e]very contract or duty governed by this chapter imposes an obligation of good faith in the  
9 performance or enforcement.” Plaintiff asserts that the HOA owed a duty of good faith, candor,  
10 honesty in fact and observance of reasonable standards of fair dealing, in the performance of its  
11 duties and during the foreclosure sale process as discussed further infra. In this case, the Plaintiff  
12 could not have learned of the HOA’s breach of their duty of good faith in time to file its claim not  
13 due to Plaintiff’s negligence or failure of due diligence, but because of HOA’s intentional failure to  
14 disclose facts of the tender / Attempted Payment to Plaintiff. There is good cause under the facts of  
15 this case to apply the discovery rule to the statute of limitations founded upon a statute in NRS  
16 11.190(3)(a).  
17

18       The HOA’s Motion is an accurate statement of the law if the Plaintiff were contesting the  
19 conduct of the sale or aspects of the sale that were reviewable or determinable and not concealed;  
20 however, the facts of this case demonstrate that the breach of good faith is premised on the HOA’s  
21 intentional failure to disclose facts following the inquiry of Plaintiff, that have caused injury to  
22 Plaintiff. Specifically, as Mr. Haddad provided in his Declaration, he would not have bid nor  
23 purchased the Property at the Foreclosure Sale had he been aware of a tender of the HOA Lien by  
24 BANA. Plaintiff suffered economic harm as a result of the HOA’s misrepresentation to Plaintiff.  
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1 The Plaintiff was damaged as a result of the Plaintiff's purchase of the Property subject to the Deed  
2 of Trust that at the time of the Foreclosure Sale exceeded the fair market value of the Property.

3 The Court should deny the HOA's Motion because Plaintiff's claims against the HOA  
4 and/or HOA Trustee are not barred by the statute of limitations based upon the facts of this  
5 Complaint. The HOA argues that Plaintiff's claims against it and/or the HOA Trustee expired three  
6 years at the latest, from the recording of the HOA Foreclosure Deed pursuant to the statute of  
7 limitations contained within NRS §11.190(3)(a). The HOA Foreclosure Sale occurred on  
8 September 5, 2012 and the HOA Foreclosure Deed was recorded on September 11, 2012. In  
9 support of its argument, HOA argues that Plaintiff's claims originate at the latest from the  
10 recording of the HOA Foreclosure Deed.  
11

12 In the present case, Plaintiff is the third-party purchaser from the HOA Foreclosure Sale.  
13 The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure Sale  
14 intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding the  
15 Property and specifically the priority of the lien being foreclosed upon, and ultimately affected  
16 Plaintiff's decision whether to actually submit a bid on the Property or not. Had Plaintiff known  
17 that it was purchasing the Property subject to the Deed of Trust, Plaintiff would have never  
18 submitted a bid in the first place, thus avoiding this entire controversy. See Declaration.  
19

20 Next, the Court should deny the HOA's Motion because the discovery rule tolls the statute  
21 of limitations upon these facts. In the present case, at the time of the HOA Foreclosure Sale, the  
22 HOA and HOA Trustee knew that BANA had tendered/Attempted Payment the HOA Lien but did  
23 not inform the bidders. Neither the HOA nor the HOA Trustee ever disclosed that BANA had in  
24 fact tendered the HOA Lien and/or Attempted Payment.  
25

26 At the time the underlying matter was begun, Plaintiff believed that the HOA Foreclosure  
27 Sale was conducted properly pursuant to the Recitals in the HOA Foreclosure Deed and that the  
28

1 Deed of Trust was extinguished. The Plaintiff could not have discovered on its own whether or not  
2 the Property was being sold subject to Lender's Deed of Trust without first commencing a quiet  
3 title action against Lender, conducting discovery, and finally having Lender, here U.S. Bank by  
4 way of BANA, disclose the tender after the *SFR Investments* decision by the Nevada Supreme  
5 Court. As stated in the Declaration, Mr. Haddad would inquire and ask if any payments had been  
6 made.  
7

8         Given the Discovery in the Case, Plaintiff then believed that it had claims against the HOA  
9 and/or the HOA Trustee; and it initiated the instant case within the statute of limitations pursuant to  
10 NRS §11.190(3)(d), specifically governing "an action for relief on the ground of fraud or mistake,  
11 but the cause of action in such a case shall be deemed to accrue upon the discovery by the  
12 aggrieved party of the facts constituting the fraud or mistake." (Emphasis added.). Thus, the  
13 discovery rule is applicable to the present facts.  
14

15         The general rule concerning statutes of limitation is that a cause of action accrues  
16 when the wrong occurs and a party sustains injuries for which relief could be sought.  
17 An exception to the general rule has been recognized by this court and many others  
18 in the form of the so-called "discovery rule." Under the discovery rule, the statutory  
period of limitations is tolled until the injured party discovers or reasonably should  
have discovered facts supporting a cause of action.

19 *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990) (citations omitted). Nevada has  
20 adopted the discovery rule, and thus time limits generally "do not commence and the cause of  
21 action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the  
22 facts giving rise to the damage or injury." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265,  
23 934 P.2d 229, 233 (Nev. 1997).  
24

25         In the present case, the date from which Plaintiff discovered the HOA and/or HOA  
26 Trustee's concealment of the tender is the operable date, because Plaintiff had no way of knowing  
27 of this tender/Attempted Payment. In *TMX, Inc. v. Volk*, 2015 Nev. App. Unpub. LEXIS 404 at  
28 pages 1-2, 2015 WL 5176619 (August 31, 2015), ruled that:



1           Actions for fraud and misrepresentation have a three-year statute of  
2 limitations. NRS 11.190(3)(d). The date on which a statute of limitations accrues is  
3 normally a question of fact, and the district court may determine that date as a matter  
4 of law only when the uncontroverted evidence irrefutably demonstrates the accrual  
5 date. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-54, 277 P.3d at 458,  
6 462-63 (2012). Non-compliance with a statute of limitations is a non-jurisdictional,  
7 affirmative defense, see, e.g., *Dozier v. State*, 124 Nev. 125, 129, 178 P.3d 149, 152  
8 (2008), and the party asserting an affirmative defense bears the burden of proof. See  
9 *Nev. Ass'n Servs. v. Eighth Judicial Dist. Court of Nev.*, 130 Nev. , , 338 P.3d 1250,  
10 1254 (2014). As judging the validity of an affirmative defense "often requires  
11 consideration of facts outside of the complaint[.]" an affirmative defense generally  
12 does not provide grounds for a court to grant a motion to dismiss. *Kelly-Brown v.*  
13 *Winfrey*, 717 F.3d 295, 308 (2d Cir. 2013); see also *In re CityCenter Constr. & Lien.*  
14 *Master Litig.*, 129 Nev. , n.3, 310 P.3d 574, 579 n.3 (2013) (noting courts generally  
15 do not consider matters outside the pleading in determining a motion to dismiss);  
16 *Lubin v. Kunin*, 117 Nev. 107, 116, 17 P.3d 422, 428 (2001) (noting defenses  
17 generally should not be considered on a motion to dismiss).

18           "The general rule concerning statutes of limitation is that a cause of action  
19 accrues when the wrong occurs and a party sustains injuries for which relief could  
20 be sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). But, the  
21 Nevada Supreme Court has provided an exception to the general rule, referred to as  
22 the discovery rule, under which "the statutory period of limitations is tolled until the  
23 injured party discovers or reasonably should have discovered facts supporting a  
24 cause of action." *Id.* The discovery rule generally applies where the statute of  
25 limitations does not specify when a cause of action accrues. *Bemis v. Estate of Bemis*,  
26 114 Nev. 1021, 1025 n.1, 967 P.2d 437, 440 n.1 (1998). Because NRS 11.190(1)(b)  
27 is silent as to when accrual occurs and NRS 11.190(3)(d) expressly incorporates the  
28 discovery rule, the discovery rule applies to both of Mallory's claims. Thus, we first  
consider when Mallory discovered or reasonably should have discovered the harm.  
(Emphasis added.)

          As the court provided in *TMX, Inc.*, "the discovery rule generally applies where the statute  
of limitations does not specify when a cause of action accrues," and the *TMX, Inc.*, Court cited  
NRS 11.190(1)(b) as being "silent as to when accrual occurs." *Id.* NRS 11.190(1)(b) provides that  
"an action upon a contract, obligation or liability founded upon an instrument in writing . . . " and  
when compared with NRS 11.190(3)(a) it is clear that NRS 11.190(3)(a) is similarly silent as to  
when accrual of the action occurs; therefore, the general rule is that the discovery rule would apply  
to claims premised upon NRS 11.190(3)(a) in the Complaint.

1           **E. The HOA’s Use of Plaintiff’s Prior Testimony is Without Context, Creating an Issue**  
2           **of Fact.**

3           The HOA sets forth several quotes of Mr. Haddad from prior litigation in an effort to  
4 disprove Plaintiff’s assertions in the Complaint, verified in the Declaration, that Plaintiff, through  
5 Mr. Haddad, would inquire as to a possible tender concerning a property before bidding on the  
6 property. The HOA’s analysis misses several critical issues of fact in an effort to disprove Mr.  
7 Haddad’s assertion. First, the HOA does not specify the **timeframe** for the sales that the various  
8 testimony concerns. It is only reasonable that Mr. Haddad’s policies and procedures would change,  
9 especially in light of case law. For instance, the decision of *SFR Invs. Pool 1, Ltd. Liab. Co. v. U.S.*  
10 *Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (Nev. 2014)(“*SFR*”) issued on September 18, 2014. It is  
11 only reasonable to expect that the policies and procedures would vary, thus, in the declaration Mr.  
12 Haddad does state “at all time relevant” in his Declaration. As such, it is reasonable that Mr.  
13 Haddad’s policies would change to reflect the case law. Furthermore, it is reasonable to expect that  
14 Mr. Haddad would not have received responses to all inquiries. Thus, while the HOA sets forth that  
15 Mr. Haddad would state he did not have communication with a homeowner’s association or their  
16 agent, in some matters, the quoted language does not address **whether Mr. Haddad made**  
17 **inquiries**, only whether Mr. Haddad had communications. If a person asks a question, but receives  
18 no response, then an honest answer is to say that they did not “talk about” a property, but not that  
19 the person did not ask. It is possible for Mr. Haddad to inquire, or to be refused the opportunity to  
20 inquire, and thus have a policy of asking a question, but not receive a reply. Finally, the HOA’s  
21 quotations also switch between references to the homeowner association and the homeowner  
22 association agent, i.e. the homeowner association itself or the collection agents for the homeowner  
23 association. homeowner associations generally do not conduct sales; their agents generally conduct  
24 the auctions, or their agents retain third parties to conduct the auctions. Thus, taking quotations  
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1 from other cases, without context as to the time of the sale, the parties involved, and the processes  
2 set forth at the time, can only create a factual question in this matter as to the similarities or  
3 differences. Statements that Mr. Haddad did not contact the homeowner association is only  
4 reasonable in matters where the homeowner association agent, acting on behalf of the HOA, would  
5 have the relevant information. To the extent that the HOA challenges Mr. Haddad's Declaration,  
6 the Motion fails at it leaves unresolved relevant issues of fact, which should be decided at trial.  
7

8 **F. Plaintiff has Alleged and is Able to Prove Damages.**

9 The HOA questions Plaintiffs disclosure of damages: the HOA's argument along these lines  
10 is solely that Plaintiff has not produced documents sufficient to prove the damages that it has  
11 asserted. Plaintiff's assertion is set forth in the Complaint; had Plaintiff been informed of the  
12 Attempted Tender, the Plaintiff would not have bid on the Property, and thus the damages stem from  
13 the purchase of the Property. These damages include the amount bid upon the Property, the amounts  
14 spent on this and the Case, and the ongoing encumbrance upon the underlying Property following  
15 the HOA Foreclosure Sale after Plaintiff obtained the Property which Plaintiff believed had been  
16 extinguished based upon the belief no payment had been made prior to the HOA Foreclosure Sale.  
17

18 **G. The HOA is Not Entitled to Summary Judgment regarding Breach of Good Faith,**  
19 **Civil Conspiracy or Breach of NRS Chapter 113.**

20 As set forth above, there remain issues of fact which the HOA has failed to address. While  
21 the HOA contends that, based upon the various Nevada Supreme Court Orders, that it does not  
22 have an affirmative duty of disclosure, it has not shown that it's failure to disclose, where Plaintiff  
23 through the Declaration shows it was the policy and procedure to inquire, results in the same  
24 outcome. Thus, to the extent that there remains a question as to whether the HOA, or in this matter  
25 the HOA's agent the HOA Trustee, responded to Plaintiff's inquires, then the Plaintiff is not  
26 entitled to summary judgment.  
27  
28

1 CONCLUSION

2 Based upon the foregoing, this Court must deny the HOA's Motion, as there remain  
3 questions of relevant fact regarding the actions of the HOA, the HOA's agent the HOA Trustee,  
4 and Daisy Trust. Furthermore, an analysis of the applicable statutes and corresponding authorities  
5 indicates that the position endorsed by the Plaintiff is the only position that is sensible.  
6

7 Dated this June 10, 2021.  
8 ROGER P. CROTEAU & ASSOCIATES, LTD.  
9 /s/ Christopher L. Benner  
10 Roger P. Croteau, Esq.  
11 Nevada Bar No. 4958  
12 Christopher L. Benner, Esq.  
13 Nevada Bar No. 8963  
14 2810 W. Charleston Blvd., Ste. 75  
15 Las Vegas, Nevada 89102  
16 Attorneys for Plaintiff  
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/s/ Joe Koehle  
An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.

# EXHIBIT 1

# EXHIBIT 1

**DECLARATION OF IYAD HADDAD**

IYAD “EDDIE” HADDAD, being first duly sworn, deposes and says:

I, Iyad Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the manager of Resource Group LLC, as trustee of Daisy Trust (“*Daisy Trust*”). Daisy Trust obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Opposition to the HOA’s Motion. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that prior to attending and/or at an HOA Foreclosure Sale pursuant to NRS 116 at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association’s lien. If I learned that a tender had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

I would, and did, rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed that provided that the HOA and HOA Trustee complied with all requirements of law. I reasonably relied upon the HOA and/or the HOA Trustee’s material omission of the tender and/or Attempted Payment of the Super Priority Lien Amount and/or the Attempted Payment or any portion thereof upon prior inquiry when I purchased the Property on behalf of the Plaintiff.

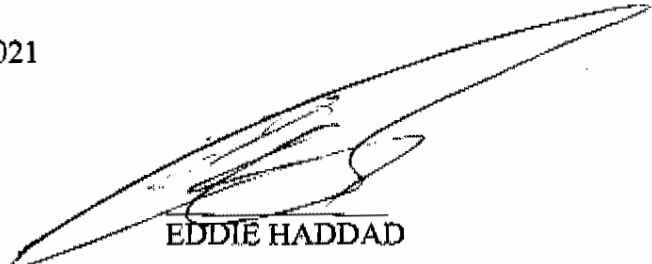
1 As part of my practice and procedure in both NRS 107 and NRS 116 foreclosure sales, I  
2 would call the foreclosing agent/HOA Trustee and confirm whether the sale was going forward on  
3 the scheduled date; and in the context of an NRS 116 foreclosure sale, I would ask if anyone had  
4 paid anything on the account. I would contact the office of the foreclosing agent/HOA Trustee; I  
5 would ask the relevant questions to the employee who answered the phone with the understanding  
6 that an employee who answered for the foreclosing agent/HOA Trustee would be able to answer my  
7 questions, or direct me to another, appropriate, employee.

9 I would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the  
10 Property would in fact be sold on the date stated in the Notice of Sale, obtain the opening bid, so I  
11 could determine the amount of funds necessary for the auction and inquire if any payments had been  
12 made; however, I never inquired if the "Super Priority Lien Amount" had been paid. I would  
13 reasonably rely on the information provided by employee representatives of the foreclosing  
14 agent/HOA Trustee who was charged with responding to my inquiries. I personally do all of the  
15 research on any and all properties that I purchased at the HOA Foreclosure Sales.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 9<sup>th</sup> day of June, 2021

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EDDIE HADDAD





**RPLY**  
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*Attorneys for Defendant El Capitan*  
*Ranch Landscape Maintenance Association*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,  
Plaintiff,  
  
vs.  
  
EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, a domestic  
non-profit corporation,  
  
Defendant.

Case No.: A-19-789674-C  
Dept. No.: 14

**EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION'S  
REPLY IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**Hearing Date: June 29, 2021**

**Hearing Time: 9:30 AM**

Defendant El Capitan Ranch Landscape Maintenance Association (the "Association"), by and through its attorneys, Leach Kern Gruchow Anderson Song, respectfully submits its Reply in support of Motion for Summary Judgment ("Reply"). The Reply is based upon NRCP 56, the attached Memorandum of Points and Authorities, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing of this Motion.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Arguments**

**A. There is No Duty under NRS Chapter 116 to Inform Plaintiff That a Third Party Attempted to Make a Partial Payment of a Delinquent Assessment Lien.**

Plaintiff's Opposition is nothing more than a recitation of the same arguments Plaintiff has made throughout this litigation that have been unanimously rejected by the Supreme Court of Nevada. That is, that NRS Chapter 116 contained a duty to inform Plaintiff that a third party attempted to contact Alessi & Koenig to make a partial payment of the Association's delinquent assessment lien. Simply put, and as the Supreme Court of Nevada has held on numerous occasions, NRS 116.31162 through NRS 116.31168 does not contain such a duty.

Within the Association's Motion, it cites to almost 15 instances wherein the Supreme Court of Nevada has rejected the exact argument made in Plaintiff's Opposition. *See* Motion for Summary Judgment at 4-5 (citing *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019); *See Mann St. Tr. v. Elsinore Homeowners Ass'n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners' Association*, No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El Diablo v. Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass'n, Inc.*, No. 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980 Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL 6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246*

1 *Ferrell, v. Treasures Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1  
2 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master*  
3 *Association*, No. 80760, 2021 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series*  
4 *9157 Desirable v. Tapestry at Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1  
5 (Nev. Feb. 16, 2021). The Supreme Court has not waived on this issue. Accordingly, the  
6 Association requests summary judgment be granted in its favor.

7 Plaintiff attempts to distinguish this case from the afore-mentioned cases by attempting to  
8 frame the issue as a duty to disclose after “reasonable inquiry” as if this was a new argument that  
9 was not presented to the Supreme Court of Nevada in the cases cited above. *See* Opposition at  
10 12. However, a simple review of these cases reveals that Plaintiff made the same argument  
11 before the Supreme Court of Nevada and it rejected the same. For example, in *Saticoy Bay, LLC*  
12 *Series 8320 Bermuda Beach*, the Supreme Court of Nevada held “[a]lthough appellant’s  
13 complaint alleges generally that appellant had a “pattern and practice” of “attempt[ing] to  
14 ascertain whether anyone had attempted to or did tender any payment,” the complaint does not  
15 allege that appellant specifically asked respondents whether a superpriority tender had been  
16 made in this case, much less that respondents misrepresented that a superpriority tender had not  
17 been made.” 2020 WL 6130913 fn. 2. Plaintiff’s Complaint in this matter contains no such  
18 allegation. In fact, Plaintiff fails to even allege it was its “practice and procedure” to attempt to  
19 ascertain an attempt was made to make a partial payment of the Association’s lien. *See* Compl.  
20 As the Supreme Court of Nevada held in *Saticoy Bay, LLC Series 8320 Bermuda Beach*, this is  
21 not enough.

22 More importantly, Plaintiff has failed to produce any evidence establishing that it  
23 attempted to inquire regarding whether a law firm attempted to contact Alessi & Koenig to make  
24 a partial payment of the Association’s lien. *See* Opposition. The Arbitrator rejected Plaintiff’s  
25 unsupported statements that he contacted the Association or the collection company prior to the  
26 foreclosure sale. *See* Arbitrator’s Decision, Exhibit B. In fact, the Arbitrator expressly held that  
27 Plaintiff presented no evidence that any such contact was attempted by Plaintiff. *Id.*  
28

On December 29, 2020, the Association served written discovery on Plaintiff seeking information on numerous issues, the most important of which was requesting all information and documents regarding whether Plaintiff “asked the Association or Collection Company prior to bidding at the Foreclosure Sale whether a payment as to any portion of the Association’s Lien had been made or attempted.” See Plaintiff’s Responses to Interrogatories, **Exhibit A**; see also Plaintiff’s Responses to Requests for Production, **Exhibit B**. However, Plaintiff failed to produce any such evidence. Instead, Plaintiff responded by stating, without any evidence, that it was Plaintiff’s “practice and procedure” to do so. If this type of allegation was not enough to survive a motion to dismiss as set forth in *Saticoy Bay, LLC Series 8320 Bermuda Beach*, it is certainly not enough to survive a Motion for Summary Judgment. Accordingly, the Association requests summary judgment be granted in its favor.

**B. The Allegations of the Complaint are Belied by the Prior Testimony of Plaintiff’s Representative.**

In the Opposition, Plaintiff does not dispute the evidence produced by the Association that conclusively establishes that Plaintiff’s manager, Mr. Haddad, had no communications with either the HOA, the collection company, or the lending institutions prior to acquiring properties at HOA sales. See Opposition at 21-22. Rather, Plaintiff states, without providing any evidence, that there is an issue of fact. *Id.* However, a simple statement without providing any evidence of the veracity of that statement is simply not enough under the Rule 56 standard, which requires Plaintiff to support a fact by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.”

Moreover, that Plaintiff continues to make such unsupported statements in light of the evidence produced by the Association through sworn deposition testimony, sworn trial testimony, responses to discovery and sworn statement in prior pleadings is astonishing. Simply put, Mr. Haddad did not have a policy and procedure to proactively reach out to HOAs or the

1 collection companies prior to the foreclosure sales. Instead, this case represents little more than  
2 Plaintiff's latest attempt to deliberately change and fabricate legal positions and arguments based  
3 upon the exigencies of the moment.

4 In sum, Plaintiff failed to produce any evidence in its Opposition to support the  
5 argument that it contacted the Association prior to the foreclosure sale in any way because  
6 no such evidence exists, as it was not the policy of Mr. Haddad to do so. As such, summary  
7 judgment should be entered in favor of the Association.

8 **C. The Foreclosure Deed Upon Sale Was Issued Without Warranty.**

9 Confusingly, Plaintiff opposes this portion of the Association's Motion by again arguing  
10 that the Association had a duty to inform Plaintiff that a law firm attempted to contact Alessi &  
11 Koenig to make a partial payment of the Association's lien and that the Foreclosure Deed  
12 warranted that duty. This argument is completely irrelevant to the argument made in the  
13 Association's Motion—that the foreclosure deed was conveyed without warrant as to title as  
14 required by NRS 116.31164.

15 "The intent of the parties...can be ascertained **only from the language of the deeds**  
16 **themselves.**" *City Motel, Inc. v. State ex rel. State Dep't of Highways*, 75 Nev. 137, 141, 336  
17 P.2d 375, 377 (1959) (emphasis added). Here, the foreclosure deed specifically provides that  
18 "Alessi & Koenig, LLC (herein called Trustee) . . . does hereby grant, without warranty  
19 expressed or implied to: **Daisy Trust** (Grantee), all its right, title and interest in the property . . ."  
20 See Foreclosure Deed, attached to Association's Motion for Summary Judgment ("MSJ") as  
21 Exhibit A.

22 In accordance with the foregoing language, the Association's interest in the Property was  
23 conveyed without warranty as to title to Plaintiff in exchange for \$3,700.00. *Id.* There is  
24 nothing within the deed by which the Association promises anything beyond conveying its  
25 interest to Plaintiff. *Id.* Any alternative construction as proffered by Plaintiff as contained  
26 throughout the Opposition directly contradicts the plain language of the deed expressly  
27 disclaiming all warranties to titled either "expressed or implied" as mandated by NRS  
28 116.31164. Plaintiff cannot articulate, and did not produce any admissible evidence of, an actual

1 breach of any duty owed to it by the Association but rather simply invites this Court to vitiate the  
2 plain and controlling language of the Foreclosure Deed, which it cannot do.

3 Stated differently, Plaintiff's claim is essentially that the Association's foreclosure sale  
4 deprived Plaintiff of what it subjectively believed it would receive as a result of the HOA  
5 foreclosure sale. In other words, notwithstanding the low purchase price and the reality that  
6 "purchasing property at an HOA foreclosure sale was a risky investment, akin to purchasing a  
7 lawsuit," in which a "purchaser at an HOA foreclosure sale risked purchasing merely a  
8 possessory interest in the property subject to the first deed of trust (*Bourne Valley Court Tr. v.*  
9 *Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1136 (D. Nev. 2015), *vacated sub nom. Bourne*  
10 *Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016)), Plaintiff seeks to  
11 postulate what could only be described as an unfounded fiction void from reality, evidence or  
12 legal support.

13 In compliance with NRS 116.31164(3)(a), Alessi & Koenig delivered a deed to the  
14 highest bidder explicitly conveying the property "without warranty expressed or implied."  
15 When faced with similar claims, the Supreme Court of Nevada acknowledged the lack of  
16 standard warranties given to a purchaser at an HOA foreclosure sale by noting:

17 [the purchaser] has provided no legal support for the unorthodox  
18 proposition that the winning bidder at a foreclosure sale can bring  
19 a fraud claim against the auctioneer when the auctioneer's  
foreclosure notices have disclaimed any warranties as to the title  
being conveyed.

20 *A Oro, LLC v. Ditech Fin. LLC*, 434 P.3d 929, 2019 WL 913129 at \*1 fn 2 (Nev. Feb. 20, 2019)  
21 (unpublished disposition).

22 The Supreme Court of Nevada similarly observed the inherent lack of prejudice to  
23 purchasers at HOA foreclosures because "one who bids upon property at a foreclosure sale does  
24 so at his peril, and thus, if a sale is void, a purchaser should not be entitled to reap a windfall."  
25 *Res. Group, LLC as Tr. of E. Sunset Rd. Tr. v. Nevada Ass'n Services, Inc.*, 135 Nev. 48, 53, 437  
26 P.3d 154, 159 (2019). The Ninth Circuit has described such purchaser's expectations of free and  
27 clear title as "unilateral" and "unfounded" for, among other reasons, the fact that it "is not  
28 mandated by the Nevada Foreclosure Statute [NRS Chapter 116]." *Fed. Home Loan Mortg.*

1 *Corp. v. SFR Investments Pool 1, LLC*, 893 F.3d 1136, 1148–49 (9th Cir. 2018) *cert. denied*, 139  
2 S. Ct. 1618 (2019).<sup>1</sup>

3 Simply stated, nothing under NRS 116 mandates delivery of free and clear title, which  
4 means purchasers, like Plaintiff, have no legitimate claim of free and clear title in relation to  
5 property sold at HOA foreclosure sales. *Id.* at 1148. Accordingly, as a matter of law, Plaintiff  
6 had no reasonable basis for presuming the foreclosure sale extinguished all security interests and  
7 cannot show that any expectation of clear title was justified under either the terms of the actual  
8 foreclosure deed or Nevada law as codified in NRS Chapter 116. As such, summary judgment  
9 should be entered in favor of the Association.

10 **D. Plaintiff's Claim against the Association is Time-Barred.**

11 As set forth in the Association's Motion for Summary Judgment, "[i]f the facts giving  
12 rise to the cause of action are matters of public record then '[t]he public record gave notice  
13 sufficient to start the statute of limitations running.'" *Job's Peak Ranch Cmty. Ass'n, Inc. v.*  
14 *Douglas Cty.*, No. 55572, 2015 WL 5056232, at \*3 (Nev. Aug. 25, 2015) (quoting *Cumming v.*  
15 *San Bernardino Redev. Agency*, 101 Cal. App. 4th 1229, 125 Cal. Rptr. 2d 42, 46 (Ct. App.  
16 2002)); *see also Allen v. Webb*, 485 P.2d 677, 684 (Nev. 1971). Plaintiff's Complaint arises  
17 from the foreclosure deed, which is a publicly recorded document. Plaintiff argues that its  
18 claims are warranted because it relied on the recital set forth in the Foreclosure Deed and, more  
19 specifically, that the claims survive summary judgment because the Association owed a duty to  
20 disclose additional information to bidders under NRS Chapter 116.

21 Because the Foreclosure Deed is a publicly recorded document, and because Plaintiff's  
22 claim is subject to at the latest NRS 11.190(3)(a)'s<sup>2</sup> three-year limitation period for a liability

23  
24 <sup>1</sup> In evaluating NRS 116.3116(2) the *Fed. Home Loan Mortg.* Court explained: "The statute  
25 does not mandate, and SFR [a purchaser like Plaintiff] has presented no language mandating,  
26 vestment of rights in purchasers at HOA foreclosure sales. SFR therefore lacks 'a legitimate  
27 claim of entitlement,' *Roth*, 408 U.S. at 577, 92 S.Ct. 2701, deriving from 'the language of the  
28 statute,' since, here, the asserted entitlement is not "couched in mandatory terms." *Johnson*, 623  
F.3d at 1030 (quoting \*1149 *Wedges/Ledges of Cal.*, 24 F.3d at 62). Rather, SFR's expectation  
of obtaining free and clear title at an HOA foreclosure is more akin to a 'unilateral expectation'  
of a benefit or privilege. *Nunez*, 147 F.3d at 872 (quoting *Roth*, 408 U.S. at 577, 92 S.Ct.  
2701)."

<sup>2</sup> There is no "discovery rule" contemplated with the statute of limitations set forth NRS

1 created by statute, as a matter of law, Plaintiff’s claim accrued at the latest on the date of  
2 recordation of the Foreclosure Deed— September 11, 2012. *Job's Peak Ranch Cmty. Ass'n, Inc.*,  
3 No. 55572, 2015 WL 5056232, at \*3 (quoting *Cumming v. San Bernardino Redev. Agency*, 101  
4 Cal. App. 4th 1229, 125 Cal. Rptr. 2d 42, 46 (Ct. App. 2002)); *see also Allen*, 485 P.2d at 684;  
5 *Amber Hills II Homeowners Ass'n*, 2016 WL 1298108, at \*5; *Park Ave. Homeowners' Ass'n*,  
6 2016 WL 5842845, at \*3. Specifically, with regard to a foreclosure action, courts have stated  
7 that it is well known that the status of a lender’s deed of trust is at issue following the  
8 foreclosure of a homeowners’ association’s lien. *See Bank of New York for Certificateholders*  
9 *of CWALT, Inc. v. S. Highlands Cmty. Ass'n*, 329 F. Supp. 3d 1208, 1218 (D. Nev. 2018)  
10 (“Because [lender's] interest in the property was called into question at the time of the  
11 foreclosure sale due to the HOA's superpriority lien, [lender] knew as of the foreclosure sale that  
12 either its deed of trust was not extinguished so it was not damaged, or its deed of trust was  
13 extinguished so it was damaged.”).<sup>3</sup>

14 Here, Plaintiff knew the status of deed of trust was at issue on the foreclosure date. In  
15 fact, as this Court is aware, Plaintiff had filed numerous complaints seeking to quiet title to  
16 properties it purchased at foreclosure sales like it did in this matter. These complaints generally  
17 asserted a claim for Quiet Title and Declaratory Relief against banks and others, seeking a  
18 determination from this Court, pursuant to NRS 40.010, that Plaintiff is the rightful owner of the  
19 Property and that Defendants, and each of them, have no right, title, or interest in the Property.

20 \_\_\_\_\_ (continued)  
21 11.190(3)(a). NRS 11.190(3)(a), does not incorporate a discovery rule unlike NRS 11.190(3)(b)-  
22 (e). Plaintiff’s proposed general application of the discovery rule to all causes of action,  
23 including claims governed by NRS 11.190(3)(a), would render superfluous the explicit discovery  
24 rule provisions under NRS 11.190(3)(b)-(e). *Haney v. State*, 124 Nev. 408, 411–12, 185 P.3d  
25 350, 353 (2008). Moreover, the Legislature’s omission of the discovery rule from NRS  
26 11.190(3)(a) must be presumed intentional. *Dep't of Taxation v. DaimlerChrysler Servs. N. Am.,*  
27 *LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005).

28 <sup>3</sup> Nevada federal courts have similarly found that a claim arising out of a foreclosure occurs on  
the date of the foreclosure sale. In certifying a question to the Nevada Supreme Court regarding  
the statute of limitations for a lienholder to bring an action for declaratory relief to determine the  
effect of a foreclosure on its lien, the Ninth Circuit noted “federal district courts in Nevada have  
often, but not always, held that the limitations period starts running at the time the foreclosure  
sale is recorded and that no actual notice is required.” *U.S. Bank, N.A. as Tr. for Specialty*  
*Underwriting & Residential Fin. Tr. Mortgage Loan Asset-Backed Certificates Series 2006-BC4*  
*v. Thunder Properties, Inc.*, 958 F.3d 794, 800, n.4 (9th Cir. 2020) (collecting authority).



1 Yet notwithstanding Plaintiff's experience in these matters and the knowledge from that  
2 experience that the status of the deed of trust was at issue as early as September 11, 2012,  
3 Plaintiff stands before the Court pretending to be oblivious in hopes that it will deny the present  
4 Motion. Simply put, Plaintiff knew as early as September 11, 2012 that the status of the deed of  
5 trust was at issue. Thus, Plaintiff's Complaint was filed well beyond the limitations set forth in  
6 NRS 11.190(3)(a), as well as applicable case law, and summary judgment should be entered in  
7 favor of the Association.

8 **1. The Discovery rule is not applicable and even if it was, would not save**  
9 **Plaintiff's claim.**

10 Plaintiff was never guaranteed clear title but chose to take advantage of the low  
11 foreclosure price at the actual foreclosure sale of the Property and then, after the fact, accept a  
12 deed without warranty. In doing so, Plaintiff acquired the Property along with the inherent risks  
13 of such a purchase, which included notice of all competing interests. Nothing under the law  
14 required the Association to inform Plaintiff that a law firm "attempted to contact" Alessi &  
15 Koenig to make a partial payment of the Association's lien. Thus, not only was Plaintiff on  
16 notice of the competing first deed of trust at the time foreclosure sale, but Plaintiff was also on  
17 inquiry notice to investigate all potential claims arising from the NRS Chapter 116 foreclosure  
18 sale.

19 It appears on the face of the Complaint that Plaintiff's claims arose from conduct  
20 occurring prior to or at the time of the foreclosure sale. There are no alternative dates or credible  
21 facts pled to substantiate any later date. The discovery rule does not apply to Plaintiff's claims  
22 and Plaintiff has wholly failed to meet its burden of showing such claims are not facially barred  
23 by a three-year limitation period. Because the allegations and uncontroverted facts fail to raise  
24 any question as to when Plaintiff's claims accrued, summary judgment based on the statute of  
25 limitations is appropriate.

26 ///

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28 ///

1 **D. The Association is entitled to Summary Judgment on Plaintiff's Claims for**  
2 **Intentional/Negligent Misrepresentation, Breach of NRS Chapter 113, Breach of**  
3 **Good Faith and Civil Conspiracy.**

4 The Supreme Court of Nevada has issued numerous decisions reaffirming its holdings that  
5 expressly reject Plaintiff's claims of misrepresentation and breach of good faith, which are  
6 premised on a non-existent duty to disclose an attempt to inquire about an assessment lien. *LN*  
7 *Management LLC Series 2216 Saxton Hill*, No. 80436, 2021 WL 620513, at \*1; *LN Management*  
8 *LLC Series 5246 Ferrell*, No. 80437, 2021 WL 620930, at \*1; *Saticoy Bay, LLC, Series 3237*  
9 *Perching Bird*, No. 80760, 2021 WL 620978, at \*1; *Saticoy Bay, LLC, Series 9157 Desirable*,  
10 No. 80969, 2021 WL 620427, at \*1. The Supreme Court has not waived on this issue.  
11 Accordingly, the Association requests summary judgment be granted in its favor.

12 Finally, in those same 2 opinions, the Supreme Court of Nevada reaffirmed its position  
13 on Plaintiff's claim for conspiracy, again holding that "because respondents did not do anything  
14 unlawful, appellant's civil conspiracy claim necessarily fails." *Id.* Accordingly, the Association  
15 requests summary judgment be granted in its favor.

16 **II. Conclusion**

17 Therefore, for the reasons set forth above, summary judgment should be entered in favor  
18 of the Association.

19 Dated this 22<sup>nd</sup> day of June 2021.

20 **LEACH KERN GRUCHOW ANDERSON SONG**

21 /s/ T. Chase Pittsenbarger

22 Sean L. Anderson

23 Nevada Bar No. 7259

24 T. Chase Pittsenbarger

25 Nevada Bar No. 13740

26 2525 Box Canyon Drive

27 Las Vegas, Nevada 89128

28 *Attorneys for Defendant El Capitan Ranch*

*Landscape Maintenance Association*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certified that on this 22<sup>nd</sup> day of June 2021, caused to be served via ECM/ECF, a true and correct copy of the foregoing, **EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** as follows:

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Christopher L. Benner  
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*Attorneys for Plaintiff*

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW  
ANDERSON SONG

# Exhibit A

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(702) 228-7719 (facsimile)  
6 croteaulaw@croteaulaw.com  
7 chris@croteaulaw.com  
Attorneys for Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DAISY TRUST, a Nevada trust,  
11 Plaintiff,  
12

13 vs.

14 EL CAPITAN RANCH LANDSCAPE  
15 MAINTENANCE ASSOCIATION, a domestic  
Nevada non-profit corporation,  
16 Defendants.  
17

Case No. A-19-789674-C  
Dept No. 14

**PLAINTIFF'S RESPONSES TO  
DEFENDANT EL CAPITAN'S SECOND  
SET OF INTERROGATORIES TO DAISY  
TRUST**

18 Plaintiff Daisy Trust ("Plaintiff"), by and through its attorneys of record, Roger P. Croteau &  
19 Associates, Ltd., submits its responses to El Capitan Ranch Landscape Maintenance Association (the  
20 "HOA") Second Set of Interrogatories.

21 **GENERAL OBJECTIONS**

22 These responses are made solely for the purpose of, and in relation to, this action. Each  
23 response is given subject to all appropriate objections (including, but not limited to, objections  
24 concerning competency, relevancy, materiality, propriety and admissibility) which would require the  
25 exclusion of any statement contained herein if the discovery request was asked of, or any statement  
26 contained herein were made by, a witness present and testifying in court. All such objections and  
27 grounds therefore are reserved and may be interposed at the time of trial. The party on whose behalf  
28

1 the responses are given has not yet completed their investigation of the facts relating to this action,  
2 has not yet completed their discovery in this action, and has not yet completed their preparation for  
3 trial. Consequently, the following responses are given without prejudice to the responding party's  
4 right to produce, at the time of trial, subsequently-discovered material.

5  
6 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to  
7 be implied or inferred. The fact that any discovery request herein has been answered should not be  
8 taken as an admission, or a concession, of the existence of any facts set forth or assumed by such  
9 discovery request, or that such answer constitutes evidence of any facts set forth or assumed. All  
10 responses must be construed as given on the basis of present recollection.

11 **INTERROGATORY NO. 1:**

12 Set forth any and all facts to support of Your claim that You have an ownership interest in  
13 the Property  
14

15 **RESPONSE TO INTERROGATORY NO. 1:**

16 Plaintiff was the high bidder at the Foreclosure Sale of September 11, 2012.

17 **INTERROGATORY NO. 2:**

18 Identify any and all duties in NRS Chapter 116.3116 through NRS 116.31168 that You  
19 contend were breached by the Association that would implicate the duty of good faith set forth in  
20 NRS 116.1113.  
21

22 **RESPONSE TO INTERROGATORY NO. 2:**

23 Plaintiff refers the HOA to Plaintiff's Complaint which describes the duties Plaintiff alleges  
24 were owed to it by Defendants in this matter and the breach(es) of those duties; those duties include  
25 the duty of good faith and fair dealing pursuant to NRS 116.1113, honesty in fact, and good faith and  
26 fair dealing.  
27

28 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

**INTERROGATORY NO. 3:**

Identify any and all contracts between Yourself and the Association that would implicate the duty of good faith set forth in NRS 116.1113.

**RESPONSE TO INTERROGATORY NO. 3:**

Plaintiff refers the HOA to Plaintiff's Complaint which describes the duties Plaintiff alleges were owed to it by Defendants, including the HOA's agent by way of agency relationship, in this matter and the breach(es) of those duties.

Discovery is ongoing and Plaintiff reserves the right to supplement this response.

**INTERROGATORY NO. 4:**

Please set forth and describe in detail any and all times you have purchased a property at an HOA foreclosure sale with the knowledge that you were purchasing the property without warrant as to title to the property.

**RESPONSE TO INTERROGATORY NO. 4:**

Overbroad as to time and scope and unduly burdensome, as the Interrogatory requests that Plaintiff review every purchase without limitation to time and scope and status of law, furthermore, this Interrogatory seeks a legal conclusion as to the "warrant." Subject to, and without waiving the foregoing objections, Plaintiff has not purchased properties without some knowledge as to the interest conveyed.

**INTERROGATORY NO. 5:**

Please set forth and describe in detail the amount of rent You have collected from renting the Property since Your Purchase of the Property.

**RESPONSE TO INTERROGATORY NO. 5:**

In addition to the General Objections, Plaintiff also objects to this Interrogatory because it is not reasonably calculated to lead to the discovery of any nonprivileged matter that is relevant to any

1 party's claims or defenses. Plaintiff further objects to this Interrogatory because the requested  
2 information is not important to resolving the issues at stake in the action and is unduly burdensome,  
3 and meant solely to harass Plaintiff.

4 **INTERROGATORY NO. 5 [second]:**

5 Identify the duty set forth in NRS Chapter 116 that requires an HOA to disclose an attempt  
6 was made to make a partial payment of the Lien prior to the Foreclosure Sale.

7 **RESPONSE TO INTERROGATORY NO. 5 [second]:**

8 Objection, this Interrogatory requests a legal conclusion as to the requirements of NRS  
9 Chapter 116. Subject to, and without waiving the foregoing objection, Plaintiff refers the HOA to  
10 Plaintiff's Complaint which describes Plaintiff's evaluation prior to the purchase of real property.  
11 Plaintiff would inquire as to any payments that may have been made and expected a truthful response.

12 **INTERROGATORY NO. 6:**

13 Set forth any and all facts in support of Your claim that the Collection Company provided  
14 itself with the opportunity to perform many additional services relating to the foreclosure.

15 **RESPONSE TO INTERROGATORY NO. 6:**

16 Plaintiff refers the HOA to Plaintiff's Complaint which describes the means by which the  
17 Collection company would perform additional services, including continuing with the foreclosure  
18 without disclosure of the partial payment made prior to the Foreclosure sale, despite knowing of  
19 same.

20 **INTERROGATORY NO. 7:**

21 Set forth any and all facts in support of Your claim that the Association benefited by  
22 concealing the Bank's tender of the super-priority amount.

23 **RESPONSE TO INTERROGATORY NO. 7:**

24 Plaintiff refers the HOA to Plaintiff's Complaint which describes the means by which the  
25  
26  
27  
28



1 Association would benefit, i.e. paragraphs 34-35 of the Complaint.

2 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

3 **INTERROGATORY NO. 8:**

4 Set forth any and all facts in support of Your claim that the Association and/or the Collection  
5 Company intended that potential bidders at the Foreclosure Sale believe that they were bidding on a  
6 property for which no entity had tendered the super-priority amount.  
7

8 **RESPONSE TO INTERROGATORY NO. 8:**

9 Plaintiff refers the HOA to Plaintiff's Complaint which describes the means by which the  
10 Association would benefit, i.e. paragraphs 34-35 of the Complaint.

11 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

12 **INTERROGATORY NO. 9:**

13 Set forth any and all facts in support of Your claim that the Association and/or the Collection  
14 Company knew that if they had disclosed their acceptance of the super-priority amount of the lien  
15 that the Property would not have sold.  
16

17 **RESPONSE TO INTERROGATORY NO. 9:**

18 Plaintiff refers the HOA to Plaintiff's Complaint which describes the means by which the  
19 Association would benefit, i.e. paragraphs 34-35 of the Complaint.  
20

21 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

22 **INTERROGATORY NO. 10:**

23 Set forth any and all facts in support of Your claim that the Association made any intentional  
24 misrepresentation to You at the Foreclosure Sale.

25 **RESPONSE TO INTERROGATORY NO. 10:**

26 Plaintiff refers the HOA to Plaintiff's Complaint which describes the basis for refusal to  
27 inform Plaintiff of the payment of the Super-Priority Lien Amount, i.e. paragraphs 27-43 of the  
28

Discovery is ongoing and Plaintiff reserves the right to supplement this response.

Set forth any and all facts in support of Your claim that You reasonably relied upon any information conveyed to you by the Association or the Collection Company on the day of the Foreclosure Sale.

Plaintiff refers the HOA to Plaintiff's Complaint which describes the basis on which Plaintiff bid upon the Subject Property based upon the representations made, in writing and verbally, before the Foreclosure Sale.

JA151

VERIFICATION

STATE OF NEVADA       )  
                                  )ss:  
COUNTY OF CLARK       )

Eddie Haddad being first duly sworn, deposes and says:

That he is the corporate designee for Plaintiff in the above-entitled action; that he has read the foregoing answers to interrogatories and knows the contents thereof; that the same is true of his own knowledge and information, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

EDDIE HADDAD

SUBSCRIBED and SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

NOTARY PUBLIC in and for said  
County and State

ROGER P. CROTEAU & ASSOCIATES, LTD.  
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •  
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.

# Exhibit B

ROGER P. CROTEAU & ASSOCIATES, LTD.  
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Nevada Bar No: 4958  
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7 chris@croteaulaw.com  
Attorneys for Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DAISY TRUST, a Nevada trust,  
11 Plaintiff,

12 vs.

13 EL CAPITAN RANCH LANDSCAPE  
14 MAINTENANCE ASSOCIATION, a domestic  
15 Nevada non-profit corporation,  
16 Defendants.

Case No. A-19-789674-C  
Dept No. 14

**PLAINTIFF'S RESPONSES TO  
DEFENDANT EL CAPITAN'S SECOND  
SET OF REQUESTS FOR PRODUCTION  
TO DAISY TRUST**

17 Plaintiff Daisy Trust ("Plaintiff"), by and through its attorneys of record, Roger P. Croteau &  
18 Associates, Ltd., submits its responses to El Capitan Ranch Landscape Maintenance Association (the  
19 "HOA") Second Set of Requests for Production.

20 **GENERAL OBJECTIONS**

21  
22 These responses are made solely for the purpose of, and in relation to, this action. Each  
23 response is given subject to all appropriate objections (including, but not limited to, objections  
24 concerning competency, relevancy, materiality, propriety and admissibility) which would require the  
25 exclusion of any statement contained herein if the discovery request was asked of, or any statement  
26 contained herein were made by, a witness present and testifying in court. All such objections and  
27 grounds therefore are reserved and may be interposed at the time of trial. The party on whose behalf  
28

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2 has not yet completed their discovery in this action, and has not yet completed their preparation for  
3 trial. Consequently, the following responses are given without prejudice to the responding party's  
4 right to produce, at the time of trial, subsequently-discovered material.  
5

6 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to  
7 be implied or inferred. The fact that any discovery request herein has been answered should not be  
8 taken as an admission, or a concession, of the existence of any facts set forth or assumed by such  
9 discovery request, or that such answer constitutes evidence of any facts set forth or assumed. All  
10 responses must be construed as given on the basis of present recollection.  
11

12 **REQUEST FOR PRODUCTION NO. 1:**

13 Produce all documents that you referenced, identified, referred to and/or consulting in  
14 responding to the Association's Second Set of Interrogatories.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

16 See documents attached to Plaintiff's Initial and Supplemental disclosure, including:

- 17 1) Complaint in the Clark County District Court Case No. A-15-717806-C as SB 1-215
- 18 2) Daisy Trust's Answer and Counterclaim in the Clark County District Court Case No. A-  
19 15-717806-C as SB 216-224
- 20 3) U.S. Bank's Answer to Daisy Trust's Counterclaims in the Clark County District Court  
21 Case No. A-15-717806-C as SB 225-232
- 22 4) Alessi & Koenig's Answer in the Clark County District Court Case No. A-15-717806-C  
23 as SB 233-254
- 24 5) El Capitan Ranch Landscape Maintenance Association's Answer in the Clark County  
25 District Court Case No. A-15-717806-C as SB 255-276  
26  
27  
28

- 6) U.S. Bank's First Supplemental Disclosure of Witnesses and Documents in the Clark County District Court Case No. A-15-717806-C as SB 277-346
- 7) Alessi & Koenig's Initial Disclosures Pursuant to NRCP 16.1 in the Clark County District Court Case No. A-15-717806-C as SB 347-668
- 8) Alessi & Koenig's Responses to US Bank's First Set of Requests for Admissions in the Clark County District Court Case No. A-15-717806-C as SB 669-678
- 9) Alessi & Koenig's Responses to US Bank's First Set of Requests for Admissions in the Clark County District Court Case No. A-15-717806-C as SB 679-688
- 10) Alessi & Koenig, LLC Collection File as SB 689-807

**REQUEST FOR PRODUCTION NO. 2:**

Produce all documents referenced, identified, referred to, and/or consulted in responding to the Association's Second Set of Requests for Admission, that is not an unqualified admission.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

See documents attached to Plaintiff's Initial and Supplemental disclosure, including:

- 1) Complaint in the Clark County District Court Case No. A-15-717806-C as SB 1-215
- 2) Daisy Trust's Answer and Counterclaim in the Clark County District Court Case No. A-15-717806-C as SB 216-224
- 3) U.S. Bank's Answer to Daisy Trust's Counterclaims in the Clark County District Court Case No. A-15-717806-C as SB 225-232
- 4) Alessi & Koenig's Answer in the Clark County District Court Case No. A-15-717806-C as SB 233-254
- 5) El Capitan Ranch Landscape Maintenance Association's Answer in the Clark County District Court Case No. A-15-717806-C as SB 255-276



- 6) U.S. Bank's First Supplemental Disclosure of Witnesses and Documents in the Clark County District Court Case No. A-15-717806-C as SB 277-346
- 7) Alessi & Koenig's Initial Disclosures Pursuant to NRCP 16.1 in the Clark County District Court Case No. A-15-717806-C as SB 347-668
- 8) Alessi & Koenig's Responses to US Bank's First Set of Requests for Admissions in the Clark County District Court Case No. A-15-717806-C as SB 669-678
- 9) Alessi & Koenig's Responses to US Bank's First Set of Requests for Admissions in the Clark County District Court Case No. A-15-717806-C as SB 679-688
- 10) Alessi & Koenig, LLC Collection File as SB 689-807

**REQUEST FOR PRODUCTION NO. 3:**

Produce all documents reflecting, relating to, and/or concerning Your use of the Property.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Objection, overbroad as to time and scope, unduly burdensome, and not reasonably calculated to lead to the discovery of any nonprivileged matter that is relevant to any party's claims or defenses.

**REQUEST FOR PRODUCTION NO. 4:**

Produce any and all contracts relating to, and/or concerning the Property.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Objection, overbroad as to time and scope, as the Request does not specify a time frame, i.e. prior to the foreclosure on the Association's lien or after, unduly burdensome, and not reasonably calculated to lead to the discovery of any nonprivileged matter that is relevant to any party's claims or defenses. Subject to, and without waiving the foregoing objections, Plaintiff presumes that this Request pertains to the time period before the foreclosure sale of September 11, 2012, and states as follows: None.

**REQUEST FOR PRODUCTION NO. 5:**

Produce all documents that support of Your claim that the Association benefited by concealing the Bank's tender of the super-priority amount.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

See the Trustee's Deed Upon Sale, disclosed as SB 607-8.

**REQUEST FOR PRODUCTION NO. 6:**

Produce all documents that support of Your claim that the Association and/or the Collection Company intended that potential bidders at the Foreclosure Sale believe that they were bidding on a property for which no entity had tendered the super-priority amount.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

See Plaintiff's Initial and Supplemental disclosures, including all documents pertaining to the sale which evidence knowledge of the tender by Miles Bauer, including the September 23, 2010 correspondence disclosed as SB 570-572 tendering the Super-Priority Lien amount, and the various notices of sale failing to disclose this tender.

**REQUEST FOR PRODUCTION NO. 7:**

Produce all documents that support of Your claim that the Association and/or the Collection Company knew that if they had disclosed their acceptance of the super-priority amount of the lien that the Property would not have sold.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

See Plaintiff's Initial and Supplemental disclosures, including all documents pertaining to the sale which evidence knowledge of the tender by Miles Bauer, including the September 23, 2010 correspondence disclosed as SB 570-572 tendering the Super-Priority Lien amount, and the various notices of sale failing to disclose this tender.

1 **REQUEST FOR PRODUCTION NO. 8:**

2 Produce all documents that support of Your claim that the Association made any intentional  
3 misrepresentation to You at the Foreclosure Sale.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

5 See Plaintiff's Initial and Supplemental disclosures, including all documents pertaining to the  
6 sale which evidence knowledge of the tender by Miles Bauer, including the Septebmer 23, 2010  
7 correspondence disclosed as SB 570-572 tendering the Super-Priority Lien amount, and the various  
8 notices of sale failing to disclose this tender.  
9

10 **REQUEST FOR PRODUCTION NO. 9:**

11 Produce all documents that support of Your claim that You reasonably relied upon any  
12 information conveyed to you by the Association or the Collection Company on the day of the  
13 Foreclosure Sale.  
14

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

16 See the Trustee's Deed upon Sale, disclosed as SB 607-8.

17 Dated this March 24, 2021.  
18 ROGER P. CROTEAU & ASSOCIATES, LTD.  
19 /s/ Christopher L. Benner  
20 Roger P. Croteau, Esq.  
21 Nevada Bar No. 4958  
22 Christopher L. Benner, Esq.  
23 Nevada Bar No. 8963  
24 2810 W. Charleston Blvd., Ste. 75  
25 Las Vegas, Nevada 89102  
26 Attorneys for Plaintiff  
27  
28

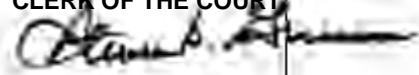
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 DAISY TRUST,

9 Plaintiff(s),

10 vs.

11 EL CAPITAN RANCH LANDSCAPE  
12 MAINTENANCE ASSOCIATION,

13 Defendant(s).

CASE NO: A-19-789674-C

DEPT. NO: XIV

14 BEFORE THE HONORABLE ADRIANA ESCOBAR,

15 DISTRICT COURT JUDGE

16 TUESDAY, JUNE 29, 2021

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
18 **EL CAPITAN RANCH LANDSCAPE MAINTENANCE**  
19 **ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

20 APPEARANCES VIA VIDEOCONFERENCE:

21 For the Plaintiff(s): CHRISTOPHER L. BENNER, ESQ.

22 For the Defendant(s): TIMOTHY C. PITTSBARGER, ESQ.

23  
24  
25 RECORDED BY: STACEY RAY, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, June 29, 2021**

2 [Case called at 10:40 a.m.]

3  
4 THE MARSHAL: Page 3.

5 THE COURT: Okay. All right. Page 3, this is Daisy Trust  
6 versus El Capitan Ranch Landscape Maintenance. Your appearances  
7 for the record; let's start with Plaintiff, please.

8 UNKNOWN SPEAKER: I'm sorry, Your Honor. What matter  
9 was that? I may have -- I'm not sure I heard you.

10 THE COURT: Daisy Trust versus El Capitan Ranch  
11 Landscape Maintenance. This is Case A789674. I show --

12 UNKNOWN SPEAKER: That's not my -- wrong matter. I  
13 apologize. I'm on the --

14 THE COURT: That's okay. Has anyone checked in, Madam  
15 Clerk or --

16 THE MARSHAL: Yes, Your Honor.

17 THE COURT: -- Marshal Ragsdale?

18 THE MARSHAL: We have Mr. Croteau and Mr. Pittsenbarger.

19 THE COURT: You need to speak a little bit louder, Jerry. I  
20 couldn't hear you. I understand -- Mr. Croteau, Mr. Pittsenbarger are  
21 you there?

22 MR. PITTSENBARGER: Yes, Your Honor. This is Chase  
23 Pittsenbarger for El Capitan Ranch.

24 THE COURT: Okay. Mr. Croteau, are you there?

25 MR. BENNER: This is Christopher Benner for Mr. Croteau's

1 office for Daisy Trust.

2 THE COURT: Okay. Good morning, Mr. Benner. And good  
3 morning, Mr. Pittsenbarger. Okay. This is Defendant's motion for  
4 summary judgment. All right. Mr. Pittsenbarger.

5 MR. PITTSENBARGER: Yes, Your Honor. I don't think I  
6 have much to add to the briefing. I think, you know, we provide a pretty  
7 long string of cites to numerous decisions by the Nevada Supreme Court  
8 that have uniformly rejected the allegations and the claims asserted in  
9 the complaint.

10 I think the only thing I'll add is, in preparation for this hearing, I  
11 went back and looked at the cases that we've had similar to this and I'll  
12 note that we've had at least three occasions before -- or three cases  
13 before Your Honor on this same exact issue in which Your Honor  
14 dismissed those claims. And in A-19-805544, the Supreme Court of  
15 Nevada actually affirmed your dismissal of those claims.

16 THE COURT: All right. Thank you. Mr. Benner.

17 MR. BENNER: Yes. Two points beforehand: one, was that  
18 this matter, pursuant to the Court's order, is and was scheduled for a  
19 settlement conference on August 12<sup>th</sup> so we did pursue that matter. I  
20 know, obviously, if the Court elects to rule on the motion for summary  
21 judgment that will address that. But we did comply with the Court's  
22 order on that. We simply -- the MSJ was noticed and heard beforehand.

23 Second, regarding the arguments made by Counsel, yes,  
24 we've also addressed those arguments in our briefing. The difference  
25 between this and the prior briefing previously submitted, was the

1 addition of the declaration which sets forth Mr. Haddad's policies and  
2 procedures with a little bit more specificity and addresses the arguments  
3 made by opposing Counsel regarding the prior discovery in this case  
4 and other cases regarding the representations made by Mr. Haddad on  
5 the part of Daisy Trust concerning what inquiries he would make.

6           So as set forth in the briefing, which I won't go into in detail  
7 because of the Court's calendar, that the issues of facts are raised  
8 based on the interpretation of what those responses and what the  
9 inquiries were. Which sets us apart from the previous cases that the  
10 Supreme Court has looked at and as cited by the HOA's counsel,  
11 regarding what the difference between an affirmative duty to disclose a  
12 tender by a lender prior to a sale and a response or a lack thereof to Mr.  
13 Haddad's inquiries before a sale.

14           THE COURT: All right. Thank you, Mr. Benner.

15           Mr. Pittsenbarger, would you like to address that last part?  
16 I've reviewed everything, but I think the last part [Indiscernible, audio  
17 distortion].

18           MR. PITTSENBARGER: Yeah. Yes, Your Honor. I think we  
19 addressed that in our reply, which is the Supreme Court has rejected the  
20 policy and procedure, you know, allegations at this point. So although,  
21 you know, I appreciate the argument made by Counsel, the Supreme  
22 Court's been presented and addressed those issues.

23           THE COURT: I'm sorry. What was the last thing you said?

24           MR. PITTSENBARGER: I said the Supreme Court's been  
25 presented those arguments and rejected those arguments.



1 THE COURT: Okay. All right. Let's see. This Court grants  
2 Defendant's motion for summary judgment. We do have large calendar.  
3 The findings that I would make, if I had more time, would be the ones  
4 that are enunciated in your pleadings.

5 Mr. Pittsenbarger, I'd like you to prepare an order including all  
6 of those. And I'd like to be sure that -- please be sure that Mr. Benner  
7 signs the order as to form and content. And please provide that to the  
8 Department 14 inbox in Word and in PDF format.

9 And I agree that, at least up to this date, the Supreme Court  
10 has rejected the issue that Mr. Benner is distinguishing. At least, you  
11 know, that's where we stand today. So I'm just going to follow through  
12 with what this Court's understanding of law on this to this date. All right.

13 Do you have any questions, Counsel? All right. Have a great  
14 day, Mr. Benner and Mr. Pittsenbarger. And have a wonderful summer,  
15 also.

16 MR. PITTSENBARGER: Thank you, Your Honor.

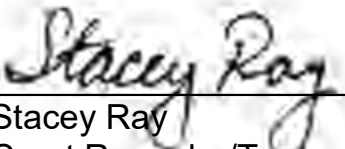
17 MR. BENNER: Thank you.

18 THE COURT: You're very welcome.

19 [Proceedings concluded at 10:47 a.m.]

20 \* \* \* \* \*

21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 Stacey Ray  
Court Recorder/Transcriber

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11 Las Vegas, Nevada 89128  
12 Telephone: (702) 538-9074  
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14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,  
12 Plaintiff,

13 vs.

14 EL CAPITAN RANCH LANDSCAPE  
15 MAINTENANCE ASSOCIATION, a  
16 domestic non-profit corporation,  
17 Defendant.

Case No.: A-19-789674-C  
Dept. No.: 14

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW**

16 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the  
17 “Association”) filed its Motion for Summary Judgment (“Motion”). On June 10, 2021, Daisy  
18 Trust (“Plaintiff”) filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the  
19 Association filed its Reply in Support of Motion for Summary Judgment.

20 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable  
21 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner  
22 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings  
23 and papers on file herein and for good cause appearing, finds as follows:

24 ///

26 ///

28 ///

LEACH KERN GRUCHOW ANDERSON SONG  
2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

**FINDINGS OF FACT**

1. On or about September 5, 2012, the Association conducted a foreclosure sale pursuant to NRS 116 upon the real property located at 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (the “Property”).

2. Plaintiff was the successful bidder at the foreclosure sale taking title to the Property by way of a Foreclosure Deed that conveyed “without warrant or covenant, expressed or implied, regarding title, possession or encumbrances.”

3. On February 19, 2019, Plaintiff filed its Complaint against the Association asserting claims for misrepresentation, breach of duty of good faith under NRS 116.1113 and civil conspiracy.

4. On or about April 19, 2019, the case was assigned to the Court Annexed Arbitration Program.

5. On February 24, 2020, the Arbitration was held.

6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the Association.

7. On April 6, 2020, Plaintiff requested Trial De Novo.

**CONCLUSIONS OF LAW**

1. In Nevada, “summary judgment is appropriate when the moving party is entitled to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*, 100 Nev. 178, 179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v. Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions, answer to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (Nev. 2008).

3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every  
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116  
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial  
5 payment of the Association’s delinquent assessment lien.

6 5. NRS 116.31162 through NRS 116.31168 details the procedures with which an  
7 HOA must comply to initiate and complete a foreclosure on its lien.

8 6. Absent from NRS 116.31162 through NRS 116.31168 is any requirement to  
9 announce at the foreclosure sale that a law firm “attempted to contact” a third party to make a  
10 partial payment of the Association’s lien.

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise  
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded  
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*  
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);  
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance*  
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an  
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales  
19 violate the principles of due process and equal protection).

20 9. The Association was simply not required pursuant to NRS 116.31162 through  
21 NRS 116.31168 to disclose that a law firm “attempted to contact” a third party to make a partial  
22 payment of the Association’s lien.

23 10. There is no Nevada authority creating a separate common law duty to announce  
24 that a law firm “attempted to contact” a third party to make a partial payment of the  
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-  
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1           13.     The scope and nature of the Association’s duties are exclusively defined by these  
2 governing statutes.

3           14.     In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the  
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower  
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary  
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither  
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*  
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153  
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123  
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact  
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal  
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to  
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162  
14 (2013) (not requiring any such disclosure).

15           15.     Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions  
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to  
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*  
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*  
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct.  
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,  
21 No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*  
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16,  
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.  
24 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*  
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL  
26 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*  
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers*  
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1 (Nev. Feb. 16, 2021).

16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at \*1.

17. Additionally, the Supreme Court of Nevada has unanimously rejected Petitions for Rehearing in the afore-mentioned cases.

18. Finally, the Arbitrator expressly rejected Plaintiff's allegations in his Arbitrator's Decision.

19. Specifically, the Arbitrator held "Plaintiff has cited no statutory authority mandating the Defendant to make disclosure as to any attempted tender."

**Plaintiff's Claim for Intentional/Negligent Misrepresentation.**

20. In *Noonan*, Appellants' argued the lower court erred in awarding summary judgment in favor of the collection company on Appellants' claim for negligent misrepresentation. *Id.*

21. Appellants' claim for misrepresentation in *Noonan* was premised on the same allegations asserted by Plaintiff in this matter—that Hampton and Hampton failed to disclose an attempt to pay a portion of the Association's lien. *Id.*

22. The Supreme Court of Nevada affirmed the lowers court's award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate  
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false  
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*  
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the  
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d  
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in  
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).  
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the  
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any  
10 such disclosure).) As such, Appellant’s argument that there was a misrepresentation by omission  
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of  
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,  
14 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ;  
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series*  
16 *3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL  
17 6129987, at \*1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on  
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at  
21 \*1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail  
22 because respondents had no duty to proactively disclose whether a superpriority tender had been  
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at \*1 (“In  
24 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because  
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);  
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude  
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing  
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS  
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been  
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court  
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*  
7 *Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL  
8 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy*  
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339*  
10 *Colinward*, 2020 WL 6129987, at \*1.

11 26. Specifically, the Supreme Court of Nevada held “because respondent did not do  
12 anything unlawful, appellant’s civil conspiracy claim necessarily fails. *See Consol. Generator-*  
13 *Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing  
14 that a civil conspiracy requires, among other things, a “concerted action, intend[ed] to  
15 accomplish an unlawful objective for the purpose of harming another”).”

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**IT IS SO ORDERED** this \_\_\_\_ day of July 2021: *Dated the 20th day of July, 2021*

**A1A 4E3 95B7 E9F0**  
**Adriana Escobar**  
**District Court Judge**

**ROGER P. CROTEAU & ASSOCIATES, LTD.**

**From:** [Chris Benner](#)  
**To:** [Chase Pittsenbarger](#); [Yalonda Dekle](#)  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law  
**Date:** Tuesday, July 20, 2021 2:17:06 PM  
**Attachments:** [image001.png](#)

---

The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

**Christopher L. Benner, Esq.**  
**Roger P. Croteau & Associates**  
**2810 Charleston Boulevard, No. H-75**  
**Las Vegas, NV 89102**  
**(702) 254-7775**  
[chris@croteaulaw.com](mailto:chris@croteaulaw.com)

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---

**From:** Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>  
**Sent:** Monday, July 19, 2021 2:24 PM  
**To:** Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.



Chase Pittsenbarger  
Attorney  
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Las Vegas, Nevada 89128  
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Fax: (702) 538-9113

---

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Email: [cpittsenbarger@lkglawfirm.com](mailto:cpittsenbarger@lkglawfirm.com)

Website: <http://lkglawfirm.com/>

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---

**From:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Sent:** Tuesday, July 13, 2021 7:42 AM

**To:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>; Chase Pittsenbarger  
<[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits.  
If acceptable, please feel free to use my e-signature.

**Christopher L. Benner, Esq.**

**Roger P. Croteau & Associates**

**2810 Charleston Boulevard, No. H-75**

**Las Vegas, NV 89102**

**(702) 254-7775**

**[chris@croteaulaw.com](mailto:chris@croteaulaw.com)**

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---

**From:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>

**Sent:** Wednesday, July 07, 2021 3:19 PM

**To:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Cc:** Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at [info@lkglawfirm.com](mailto:info@lkglawfirm.com).



Yalonda Dekle  
Legal Assistant  
Leach Kern Gruchow Anderson Song

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

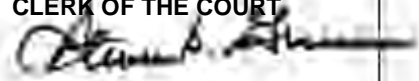
8 El Capitan Ranch Landscape  
9 Maintenance Association,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
16 case as listed below:

17 Service Date: 7/20/2021

18 Roger Croteau	croteaulaw@croteaulaw.com
19 Croteau Admin	receptionist@croteaulaw.com
20 Sean Anderson	sanderson@lkglawfirm.com
21 Robin Callaway	rcallaway@lkglawfirm.com
22 Patty Gutierrez	pgutierrez@lkglawfirm.com
23 T. Pittsenbarger	cpittsenbarger@lkglawfirm.com
24 Yalonda Dekle	ydekle@lkglawfirm.com
25 Christopher Benner	chris@croteaulaw.com
26 Matt Pawlowski	matt@croteaulaw.com



1 **NEFF**  
2 **LEACH KERN GRUCHOW**  
3 **ANDERSON SONG**  
4 **SEAN L. ANDERSON**  
5 Nevada Bar No. 7259  
6 E-mail: [sanderson@lkglawfirm.com](mailto:sanderson@lkglawfirm.com)  
7 **T. CHASE PITTSBARGER**  
8 Nevada Bar No. 13740  
9 E-mail: [cpittsenbarger@lkglawfirm.com](mailto:cpittsenbarger@lkglawfirm.com)  
10 2525 Box Canyon Drive  
11 Las Vegas, Nevada 89128  
12 Telephone: (702) 538-9074  
13 Facsimile: (702) 538-9113  
14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **DAISY TRUST, a Nevada trust,**  
12 **Plaintiff,**

13 vs.

14 **EL CAPITAN RANCH LANDSCAPE**  
15 **MAINTENANCE ASSOCIATION, a**  
16 **domestic non-profit corporation,**  
17 **Defendant.**

Case No.: A-19-789674-C  
Dept. No.: 14

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW**

17 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW**  
18 was entered in the above-entitled case on July 20, 2021, a copy of which is attached hereto.

19 DATED this 21<sup>st</sup> day of July 2021

20 **LEACH KERN GRUCHOW ANDERSON SONG**

21 */s/ T. Chase Pittsenbarger*

22 

---

23 Sean L. Anderson  
24 Nevada Bar No. 7259  
25 T. Chase Pittsenbarger  
26 Nevada Bar No. 13740  
27 2525 Box Canyon Drive  
28 Las Vegas, Nevada 89128  
*Attorneys for Defendant El Capitan Ranch  
Landscape Maintenance Association*

**LEACH KERN GRUCHOW ANDERSON SONG**  
2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW  
3 ANDERSON SONG, hereby certifies that on this 21<sup>st</sup> day of July 2021, service of the foregoing,  
4 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**, was made on  
5 all parties via the Court's CM/ECF System, as follows:

6 Roger P. Croteau  
7 Christopher L. Benner  
8 **ROGER P. CROTEAU & ASSOCIATES, LTD.**  
9 2810 W. Charleston Boulevard, Suite 75  
10 Las Vegas, Nevada 89148  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 [chris@croteaulaw.com](mailto:chris@croteaulaw.com)  
13 *Attorneys for Plaintiff*

14 */s/ Yalonda Dekle*

15 \_\_\_\_\_  
16 An Employee of LEACH KERN GRUCHOW  
17 ANDERSON SONG  
18  
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1 **FFCL**  
2 **LEACH KERN GRUCHOW**  
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4 **SEAN L. ANDERSON**  
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14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **DAISY TRUST, a Nevada trust,**  
12 **Plaintiff,**

13 vs.

14 **EL CAPITAN RANCH LANDSCAPE**  
15 **MAINTENANCE ASSOCIATION, a**  
16 **domestic non-profit corporation,**  
17 **Defendant.**

Case No.: A-19-789674-C  
Dept. No.: 14

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW**

18 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the  
19 “Association”) filed its Motion for Summary Judgment (“Motion”). On June 10, 2021, Daisy  
20 Trust (“Plaintiff”) filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the  
21 Association filed its Reply in Support of Motion for Summary Judgment.

22 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable  
23 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner  
24 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings  
25 and papers on file herein and for good cause appearing, finds as follows:

26 ///

27 ///

28 ///

**LEACH KERN GRUCHOW ANDERSON SONG**  
2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113



**FINDINGS OF FACT**

1. On or about September 5, 2012, the Association conducted a foreclosure sale pursuant to NRS 116 upon the real property located at 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (the “Property”).

2. Plaintiff was the successful bidder at the foreclosure sale taking title to the Property by way of a Foreclosure Deed that conveyed “without warrant or covenant, expressed or implied, regarding title, possession or encumbrances.”

3. On February 19, 2019, Plaintiff filed its Complaint against the Association asserting claims for misrepresentation, breach of duty of good faith under NRS 116.1113 and civil conspiracy.

4. On or about April 19, 2019, the case was assigned to the Court Annexed Arbitration Program.

5. On February 24, 2020, the Arbitration was held.

6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the Association.

7. On April 6, 2020, Plaintiff requested Trial De Novo.

**CONCLUSIONS OF LAW**

1. In Nevada, “summary judgment is appropriate when the moving party is entitled to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*, 100 Nev. 178, 179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v. Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions, answer to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (Nev. 2008).

3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every  
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116  
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial  
5 payment of the Association’s delinquent assessment lien.

6 5. NRS 116.31162 through NRS 116.31168 details the procedures with which an  
7 HOA must comply to initiate and complete a foreclosure on its lien.

8 6. Absent from NRS 116.31162 through NRS 116.31168 is any requirement to  
9 announce at the foreclosure sale that a law firm “attempted to contact” a third party to make a  
10 partial payment of the Association’s lien.

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise  
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded  
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*  
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);  
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e. Charmicor Inc. v. Bradshaw Finance*  
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an  
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales  
19 violate the principles of due process and equal protection).

20 9. The Association was simply not required pursuant to NRS 116.31162 through  
21 NRS 116.31168 to disclose that a law firm “attempted to contact” a third party to make a partial  
22 payment of the Association’s lien.

23 10. There is no Nevada authority creating a separate common law duty to announce  
24 that a law firm “attempted to contact” a third party to make a partial payment of the  
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-  
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1           13.     The scope and nature of the Association’s duties are exclusively defined by these  
2 governing statutes.

3           14.     In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the  
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower  
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary  
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither  
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*  
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153  
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123  
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact  
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal  
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to  
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162  
14 (2013) (not requiring any such disclosure).

15           15.     Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions  
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to  
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*  
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*  
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct.  
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,  
21 No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*  
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16,  
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.  
24 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*  
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL  
26 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*  
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers*  
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1 (Nev. Feb. 16, 2021).

16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at \*1.

17. Additionally, the Supreme Court of Nevada has unanimously rejected Petitions for Rehearing in the afore-mentioned cases.

18. Finally, the Arbitrator expressly rejected Plaintiff's allegations in his Arbitrator's Decision.

19. Specifically, the Arbitrator held "Plaintiff has cited no statutory authority mandating the Defendant to make disclosure as to any attempted tender."

**Plaintiff's Claim for Intentional/Negligent Misrepresentation.**

20. In *Noonan*, Appellants' argued the lower court erred in awarding summary judgment in favor of the collection company on Appellants' claim for negligent misrepresentation. *Id.*

21. Appellants' claim for misrepresentation in *Noonan* was premised on the same allegations asserted by Plaintiff in this matter—that Hampton and Hampton failed to disclose an attempt to pay a portion of the Association's lien. *Id.*

22. The Supreme Court of Nevada affirmed the lower court's award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate  
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false  
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*  
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the  
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d  
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in  
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).  
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the  
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any  
10 such disclosure).) As such, Appellant’s argument that there was a misrepresentation by omission  
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of  
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,  
14 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ;  
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series*  
16 *3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL  
17 6129987, at \*1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on  
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at  
21 \*1 (“In particular, appellant’s claims for misrepresentation and **breach of NRS 116.1113** fail  
22 because respondents had no duty to proactively disclose whether a superpriority tender had been  
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at \*1 (“In  
24 particular, appellant’s claims for misrepresentation and **breach of NRS 116.1113** fail because  
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);  
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude  
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing  
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS  
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been  
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court  
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*  
7 *Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL  
8 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy*  
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339*  
10 *Colinward*, 2020 WL 6129987, at \*1.

11 26. Specifically, the Supreme Court of Nevada held “because respondent did not do  
12 anything unlawful, appellant’s civil conspiracy claim necessarily fails. *See Consol. Generator-*  
13 *Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing  
14 that a civil conspiracy requires, among other things, a “concerted action, intend[ed] to  
15 accomplish an unlawful objective for the purpose of harming another”).”

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**IT IS SO ORDERED** this \_\_\_\_ day of July 2021. **Dated this 20th day of July, 2021**

**A1A 4E3 95B7 E9F0**  
**Adriana Escobar**  
**District Court Judge**

Approved as to content and form:

**ROGER P. CROTEAU & ASSOCIATES, LTD.**

/s/ Christopher L. Benner  
Roger P. Croteau  
Nevada Bar No. 4958  
Christopher L. Benner  
Nevada Bar No. 8963  
2810 W. Charleston Blvd., Ste. 75  
Las Vegas, Nevada 89102  
*Attorney for Plaintiff*

**From:** [Chris Benner](#)  
**To:** [Chase Pittsenbarger](#); [Yalonda Dekle](#)  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law  
**Date:** Tuesday, July 20, 2021 2:17:06 PM  
**Attachments:** [image001.png](#)

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The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

**Christopher L. Benner, Esq.**  
**Roger P. Croteau & Associates**  
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**From:** Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>  
**Sent:** Monday, July 19, 2021 2:24 PM  
**To:** Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.



Chase Pittsenbarger  
Attorney  
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**From:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Sent:** Tuesday, July 13, 2021 7:42 AM

**To:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>; Chase Pittsenbarger  
<[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits.  
If acceptable, please feel free to use my e-signature.

**Christopher L. Benner, Esq.**

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**From:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>

**Sent:** Wednesday, July 07, 2021 3:19 PM

**To:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Cc:** Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at [info@lkglawfirm.com](mailto:info@lkglawfirm.com).

-



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-

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1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape  
9 Maintenance Association,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
16 case as listed below:

17 Service Date: 7/20/2021

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2 **ROGER P. CROTEAU, ESQ.**  
3 Nevada Bar No. 4958  
4 **CHRISTOPHER L. BENNER, ESQ.**  
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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **DAISY TRUST, a Nevada trust,**  
17 **Plaintiff,**

18 **vs.**

19 **EL CAPITAN RANCH LANDSCAPE**  
20 **MAINTENANCE ASSOCIATION, a**  
21 **domestic Nevada non-profit corporation,**  
22 **Defendants**

Case No: A-19-789674-C  
Dept. No: 14

**NOTICE OF APPEAL**

23 //

24 //

25 //

26 //

27 //

1 NOTICE IS HEREBY GIVEN that Plaintiff DAISY TRUST, by and through its attorneys,  
2 Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme Court of Nevada the Findings  
3 of Fact and Conclusions of Law and Order Granting El Capitan Ranch Landscape Maintenance  
4 Associations' Motion for Summary Judgment, and all rulings and interlocutory orders giving rise to  
5 or made appealable by the final judgment.  
6

7 Dated August 18, 2021.

8 ROGER P. CROTEAU & ASSOCIATES, LTD.

9 /s/ Christopher L. Benner

10 Roger P. Croteau, Esq.

11 Nevada Bar No. 4958

12 Christopher L. Benner, Esq.

13 Nevada Bar No. 8963

14 2810 W. Charleston Blvd., Suite 75

15 Las Vegas, Nevada 89102

16 *Plaintiff Daisy Trust*  
17  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.