

**SUPREME COURT OF THE STATE OF NEVADA**

EL CAPITAN RANCH  
LANDSCAPE MAINTENANCE  
ASSOCIATION

Appellant,

vs.

DAISY TRUST, A NEVADA TRUST

Respondents.

Supreme Court Case No.: 84037

Consolidated with Supreme Court  
Case No. 83404

District Court Case No.  
A-19-789674-C

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From the Eighth Judicial District Court  
The Honorable Adriana Escobar

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**EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION'S  
REPLY BRIEF**

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### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(1), and must be disclosed:

El Capitan Ranch Landscape Maintenance Association (“Association”) has no parent company and is not publicly traded. There is no publicly traded company that owns more than 10% of the stock of Association.

The attorneys who have appeared on behalf of Appellant in this Court and in district court are:

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These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this 17<sup>th</sup> day of June 2022.

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## **ARGUMENTS**

### **A. Daisy Trust Mischaracterizes the Nature of the Dispute.**

In its Answering Brief, Daisy Trust (“Daisy”) mischaracterizes the nature of the dispute hoping to avoid the clear application of NRS 116.4117 to the underlying case. Specifically, Daisy argues that “the district court correctly found that Daisy’s claims did not arise from the HOA’s assessments or operations.” *See* Daisy’s Reply Brief and Answering Brief at 12.

While it is true that the district court’s order denying the Association’s motion for attorneys’ fees did contain the language cited by Daisy, the district court’s order was in error for a different reason. As set forth in the Association’s Answering and Opening Brief, the district court’s order was in error because it found that the Complaint did not “fit the types of actions covered by NRS 116.4117.” *See* Association’s Answering and Opening Brief at 26. Contrary to this finding, NRS 116.4117 specifically authorizes the court to award reasonable attorneys’ fees to the prevailing party in a civil action for damages or other appropriate relief “for failure or refusal to comply with any provision of this chapter...” *See* NRS 116.4117(6) & NRS 116.4117(2). There is no dispute that Daisy’s claims before the district court included a claim specifically alleging a failure by the Association to comply with NRS 116.1113, which is a “provision of [the] chapter” referenced in the statute. (JA010).

**B. Daisy’s Cited Authority Does Not Support its Arguments.**

In an effort to support both the district court’s ruling and its own argument in opposition to the Association’s Opening Brief, Daisy cites *REEC Enters. v. Savannah Falls Homeowners' Ass'n*, 481 P.3d 1258 (Nev. 2021)(“*REEC*”). See Daisy’s Answering Brief and Reply Brief at 12-13. As set forth in more detail below, *REEC* is irrelevant to this case and in no way supports either the district court’s error or Daisy’s arguments on appeal.

As acknowledged by Daisy in its Brief, the *REEC* Court found that where claims of quiet title, declaratory relief and slander of title were evaluated, without any analysis of NRS 116, fees under NRS 116.4117 were not proper. *Id.* Despite Daisy’s claim to the contrary, this case is easily distinguished from *REEC* as it is not “simply a matter involving a homeowner’s association,” but a lawsuit in which Appellant specifically alleged that the Association violated NRS Chapter 116.1113. As set forth above, NRS 116.4117 specifically applies to this case because Daisy specifically “alleged a failure [by the Association] to comply with [a] provision of [NRS 116],” namely, NRS 116.1113. (JA010).

**C. Daisy Mischaracterizes the Association’s Arguments.**

Daisy also argues that “[i]f the HOA’s position is accepted, it becomes difficult to determine when, if ever, any claim against an HOA by anyone living within, relating to, or having dealings with, would not fall under some aspect of

NRS 116, the CC&Rs, or the bylaws.” *See* Daisy’s Answering Brief and Reply Brief at 13. Daisy fails to explain why the Association’s position (that Daisy’s complaint alleging the Association breached NRS 116.1113 is the exact type of dispute contemplated by NRS 116.4117), would somehow require all courts to find all claims asserted against HOAs to fall under some provision of the statute.

Ultimately, the Association and Daisy probably do not agree on how expansive NRS 116.4117 is. However, that disagreement is irrelevant in this case, where Daisy’s claims clearly allege that the Association violated NRS 116.1113 and NRS 116.4117 clearly provides district courts with authority to award fees and costs to a prevailing party in a dispute where there is an alleged “failure or refusal to comply with any provision of [NRS Chapter 116].”

**D. The Court Did Not Exercise Its Discretion In Denying the Association’s Motion for Fees.**

Finally, Daisy argues that the district court did not err in denying the Association’s Motion for Fees because the court ultimately had discretion to award fees under the statute. *See* Daisy’s Answering and Reply Brief at 14. Daisy’s argument here misses the mark as the district court did not exercise its discretion in denying the Association’s Motion. Rather, the district court incorrectly found that “[t]his lawsuit, for misrepresentation, civil conspiracy, and **NRS 116.1113 violations** . . . does not fit the types of actions covered by NRS 116.4117.” (086-

091)(emphasis added.) In other words, the district court incorrectly found that it was precluded from granting fees and costs because it erred in its application of the statute despite its plain meaning in this case.

### **CONCLUSION**

For the reasons set forth above, the Association respectfully requests this Court reverse the district court's order denying the Association's Motion for Attorney's Fees and Costs, find that NRS 116.4117 authorizes the district court to award fees and costs, and order further proceedings consistent with that decision.

DATED this 17<sup>th</sup> day of June 2022.

**LEACH KERN GRUCHOW ANDERSON SONG**

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### **ATTORNEY CERTIFICATE**

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

I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the pages of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 1,520 words.

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

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

DATED this 17<sup>th</sup> day of June 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, June 17, 2022, I submitted the foregoing  
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