IN THE SUPREME COURT OF THE STATE OF NEVADA

DAISY TRUST, A NEVADA TRUST Appellant, v. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, A NEVADA NON-PROFIT CORPORATION; AND NEVADA ASSOCIATION SERVICES, A DOMESTIC CORPORATION Respondents.	SUPREME COURT NO.: 83477 **DOCKETING STATEMENT CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to tile it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement property and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 23

County Clark Judge Honorable Jasmin Lilly-Spells

District Ct. Case No. A-19-791254-C

2. **Attorney filing this docketing statement:**

Attorney Christopher L. Benner Telephone (702) 254-7775

Firm Roger P. Croteau & Associates

Address: 2810 W. Charleston Blvd, Suite 75, Las Vegas, Nevada 89102

Client(s) Daisy Trust

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondents(s):**

Attorney J William Ebert, Esq.; Janeen Isaacson, Esq.

Telephone (702) 382-1500

Firm Lipson Nielson, P.C.

Address: 9900 Covington Cross Dr. Suite 120, Las Vegas NV 89144

Client(s) Green Valley South Owners Association No. 1

Attorney Brandon Wood, Esq.

Telephone 702-804-8885

Firm Nevada Association Services (In House Counsel)

Address:6625 S. Valley View Blvd, Suite 300, Las Vegas, NV 89118

Client(s) Nevada Association Services

4. **Nature of disposition below (check all that apply):**

☐Judgment after bench trial

☐Judgment after jury verdict

☒Summary judgment

☐Default judgment

☐Grant/Denial of NRCP 60(b) relief

☐Grant/Denial of injunction

☐Grant/Denial of declaratory relief

☐Review of agency determination

☐Other disposition (specify): _____

☐Dismissal

☐ Lack of jurisdiction

☐ Failure to state a claim

☐ Failure to prosecute

☐Other (specify): _____

☐Divorce Decree:

☐Original ☐ Modification

5. Does this appeal rise issues concerning any of the following? No

☐ Child Custody

☐ Venue

☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Daisy Trust vs. Green Valley S. owners Ass'n No. 1 Nevada Supreme Court Appeal 82611

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.* bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The instant action relates to an award of attorney's costs to Respondents following a final judgment in their favor.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in granting Respondents' attorney's costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None Pending.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A
☐ Yes
☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

Is so, explain

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter does not fall into any of the categories in NRCP 17(a) or (b).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____N/A_____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in the appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: July 18, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Date written notice of entry of judgment or order was served: August 3, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____
Was Service by:

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed: September 2, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other: NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Appellant is appealing from the granting of the Respondents' Motions for Dismissal.

22. List all parties involved in the action or consolidated actions in the district court:
(a) Parties:

Plaintiff/Appellant: Daisy Trust
Defendant/Respondent: Green Valley South Owners Association No 1
Defendant/Respondent: Nevada Association Services

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in the appeal, *e.g.* formally dismissed, not served, or other:

N/A

23. Give a brief description (3 or 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondents sought an award of attorney's fees and costs, which the district court granted in part via Findings of Fact, conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion for Attorney's Fees and Costs that was filed on July 28, 2021.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Daisy Trust	Christopher L. Benner
Name of appellant	Name of counsel of record
October 6, 2021	/s/*Christopher L. Benner, Esq*
Date	Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on October 6, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

J William Ebert, Esq.
Janeen V. Isaacson, Esq.
Lipson Nielson P.C.
9900 Covington Cross Dr, Suite 120
Las Vegas, Nevada 89144
Attorneys for Respondent
GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1

Brandon E. Wood, Esq.
Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
Attorneys for Respondent
NEVADA ASSOCIATION SERVICES

Kristine M. Kuzemka
Kuzemka Law Group
1180 N. Town Center Dr, Ste 100
Las Vegas, NV 89144
NRAP 16 Settlement Judge

October 6, 2021,

/s/ Joe Koehle

_____
An employee of Roger P. Croteau & Associates

EXHIBIT 1

EXHIBIT 1

COMP
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
(702) 254-7775 (telephone)
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff

CASE NO: A-19-791254-C
Department 8

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust, Plaintiff, vs. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1 and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation; Defendants.	Case No.: Dept. No.:

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. Daisy Trust is the current owner of real property located at 137 Elegante Way, Henderson, Nevada 89074 (APN 177-13-214-086) (the "*Property*").

137 Elegante Way.

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

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

3. Daisy Trust acquired title to the Property by Foreclosure Deed dated September 7, 2012, by and through a homeowners association lien foreclosure sale conducted on August 31, 2012 ("*HOA Foreclosure Sale*"), by Nevada Association Services, Inc., a Nevada corporation, authorized to do business and doing business in Clark County, State of Nevada ("*HOA Trustee*"), on behalf of Green Valley South Owners Association No. 1, a Nevada domestic non-profit corporation ("*HOA*"). The HOA Foreclosure Deed was recorded in the Clark County Recorder's Office on September 7, 2012 ("*HOA Foreclosure Deed*").

4. Upon information and belief, HOA is a Nevada common interest community association or unit owners' association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.

5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada, and is organized and existing under the laws of the State of Nevada.

6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.

7. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

GENERAL ALLEGATIONS

8. Under Nevada law, homeowner's associations have the right to charge property owners residing within the community assessments to cover the homeowner's associations' expenses for maintaining or improving the community, among other things.

9. When the assessments are not paid, the homeowner's association may impose a lien against real property which it governs and thereafter foreclose on such lien.

10. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception; a homeowner's association's lien is senior to a 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

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

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).

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

12. On or about June 5, 2008, Dennis L. Scott, an unmarried man, ("*the Former Owner*") purchased the Property and obtained a purchase money loan secured by the Property from CTX Mortgage Company, LLC, a Delaware corporation ("*Lender*"), that is evidenced by a deed of trust between the Former Owner and Lender, recorded against the Property on June 27, 2008, for the loan amount of $179,188.00 ("*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 $179,188.00, and the Deed of Trust was recorded in the Clark County Recorder's Office on June 27, 2008.

13. The Former Owner executed Planned Unit Development Riders along with the Deed of Trust, effective as of June 23, 2008.

14. On September 26, 2011, MERS, on behalf of Lender, assigned its beneficial interest by Assignment of Deed of Trust to Bank of America, N.A. ("*BANA*") and recorded the document in Clark County Recorder's Office on October 5, 2011.

The HOA Lien and Foreclosure

15. Upon information and belief, the Former Owner of the Property failed to pay to HOA all amounts due to pursuant to HOA's governing documents.

16. Accordingly, on August 23, 2011, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent Assessment Lien ("*HOA Lien*"). The HOA Lien stated that the amount due to the HOA was $818.70, as of August 18, 2011, plus interest, late charges, costs, fees and other charges.

17. On November 18, 2011, HOA, through HOA Trustee, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("*NOD*") against the Property. The

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

NOD stated the amount due to the HOA was $1,819.50 as of November 16, 2011. plus accruing assessments, interest, costs and attorney's fees.

18. Upon information and belief, after the NOD was recorded, on December 19, 2011, BANA, through Miles, Bauer, Bergstom & Winters ("*Miles Bauer*") contacted the HOA Trustee and requested a ledger identifying the Super-Priority Lien Amount, comprising of up to 9 months of delinquent assessments that were owed to the HOA as of the HOA Lien ("*Super Priority Lien Amount*").

19. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the Super-Priority Lien Amount of the HOA Lien.

20. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate a response from the HOA and HOA Trustee to the "December 19, 2011, Miles Bauer letter to the HOA, care of the HOA Trustee."

21. The Affidavit stated that Miles Bauer used a Statement of Account from Nevada Association Services, Inc., for a different property in the same HOA to determine a good faith payoff.

22. On February 2, 2012, BANA, through Miles Bauer, provided a payment of $882.00 to the HOA Trustee, which included payment of up to nine months of delinquent assessments (the "*Attempted Payment*").

23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of $882.00.

24. On April 23, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against the Property ("*NOS*"). The NOS provided that the total amount due the HOA was $2,946.17 and set a sale date for the Property of May 18, 2012, at 10:00 A.M., to be held at Nevada Legal News, 930 So. Fourth Street, Las Vegas, Nevada.

25. On August 31, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed on September 7, 2012, which stated that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure Sale for the highest bid amount of $3,555.00.

26. The Foreclosure Sale created excess proceeds.

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

27. After the Notice of Default 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 all amounts due the HOA by the Former Owner, upon information and belief, Miles Bauer requested the sums due to the HOA by the Former Owner so it could calculate the breakdown of up to nine (9) months of common HOA assessments in order for BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the amount of the HOA Lien entitled to super-priority over the Deed of Trust.

28. In none of the recorded documents, nor in any other notice recorded with the Clark County Recorder's Office, did 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 $3,555.00, 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

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

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.

36. HOA Trustee acted as an agent of HOA.

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

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

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

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

41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in BANA's Complaint, filed on February 29, 2016, but not served on the Plaintiff until March 16, 2016 (*"Discovery"*) in the United States District Court Case No. 2;16-CV-00424 (the "*Case*").

FIRST CAUSE OF ACTION

(Intentional, or Alternatively Negligent, Misrepresentation

Against the HOA and HOA Trustee)

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41 hereof as if set forth fully herein.

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

43. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or provided the Attempted Payment.

44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from many additional services on behalf of HOA related to the Property and proceedings related to the HOA Foreclosure Sale.

45. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.

46. Consequently, HOA and HOA Trustee received substantial benefit as a result of their rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and intentionally failing to disclose that information to the Plaintiff or the other bidders.

47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.

48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure Sale for their own economic gain.

49. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure Sale, HOA and HOA Trustee intentionally failed to disclose material information related to the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their own economic gain.

50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material information related to the Attempted Payment of the Super-Priority Lien Amount.

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

51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at the HOA Foreclosure Sale.

52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the Property.

53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale, HOA would not have received funds in satisfaction of the HOA Lien.

54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale, HOA Trustee would not have received payment for the work that it performed on behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.

55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the Attempted Payment.

56. Plaintiff would not have purchased the Property if it had been informed that any individual or entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA Foreclosure Sale.

57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby purchased the Property.

58. HOA and HOA Trustee each profited from their intentional and/or negligent misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.

59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority of Deed of Trust vis a vis the HOA Lien.

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

60. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and intentionally withheld such information for their own economic gain.

61. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information related to the Attempted Payment of the Super-Priority Lien Amount.

62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.

63. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien Amount at the time of the HOA Sale and that their failure to disclose such information promoted the sale of the Property.

64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.

65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-Priority Lien Amount.

66. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to Plaintiff.

67. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and its duty of candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff has been economically damaged in many aspects.

68. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase, maintain, operate, litigate various cases and generally manage the Property would be lost along with the lost opportunity of purchasing other available property offered for sale where a super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to purchase a property free and clear of the deed of trust and all other liens.

69. 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.

70. 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)

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 as if set forth fully herein.

72. NRS 116.1113 provides that every contract or duty governed by NRS 116, et seq., Nevada's version of the Common-Interest Ownership Uniform Act, must be performed in good faith in its performance or enforcement.

73. A duty of good faith includes within that term a duty of candor in its dealings.

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

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

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

77. 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, fair dealings and candor pursuant to NRS 116, et seq. to Plaintiff.

78. HOA and the HOA Trustee owed a duty of good faith, fair dealings, and candor to Plaintiff.

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

80. 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.

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

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

81. 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)

82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 81 as if set forth fully herein.

83. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the Super-Priority Lien Amount.

84. Upon information and belief, acting together, Defendants reached an implicit or express agreement amongst themselves whereby they agreed to withhold the information concerning the Attempted Payment of the Super-Priority Lien Amount from bidders and potential bidders at the HOA Foreclosure Sale.

85. Defendants knew or should have known that their actions and omissions would injure the successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To further their conspiracy, upon information and belief, Defendants rejected the Attempted Payment for the purpose of obtaining more remuneration than they would have otherwise obtained at a sale of the subpriority portion of the HOA Lien.

86. 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.

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

FOURTH CAUSE OF ACTION

(Violation of NRS 113, et seq.)

89. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 87 as if set forth fully herein.

90. Pursuant to NRS 113, et seq., the HOA and the HOA Trustee must disclose the Attempted Payment and/or any payments made or attempted to be made by BANA, the Former Owner, or any agents of any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.

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

91. The HOA and HOA Trustee are required to and must provide a Seller's Real Property Disclosure Form ("*SRPDF*") to the "Purchaser" as defined in NRS 116, et seq., at the time of the HOA Foreclosure Sale.

92. NRS 116 et seq. foreclosure sales are not exempt from the mandates of NRS 113 et seq.

93. The HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and Section 11, that provide as follows:

> 9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?
>
> (a) Common Interest Community Declaration and Bylaws available?
> (b) Any periodic or recurring association fees?
> (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?
> (d) Any litigation, arbitration, or mediation related to property or or common areas?
> (e) Any assessments associated with the property (excluding property tax)?
> (f) Any construction, modification, alterations, or repairs made without required approval from he appropriate Common Interest Community board or committee?
>
> . . .
>
> 11. Any other conditions or aspects of the [P]roperty which materially affect its value or use in an adverse manner? (Emphasis added)

See SRPDF, Form 547, attached hereto as Exhibit 1.

94. Section 11 of the SRPDF relates directly to information known to the HOA and the HOA Trustee that materially affects the value of the Property, and in this case, if the Super Priority Lien Amount is paid, or if the Attempted Payment is rejected, it would have a material adverse affect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee when the SRPDF is completed and disclosed to the purchaser/the Trust.

95. The HOA Responses to Section 9(c) - (e) of the SRPDF would provide notice to the Plaintiff of any payments made by BANA or others on the HOA Lien.

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

96. The HOA Responses to Section 11 of the SRPDF generally deal with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and Attempted Payment that would only be known by the HOA and the HOA Trustee.

97. Pursuant to Nevada Real Estate Division's ("*NRED*"), Residential Disclosure Guide (the "*Guide*"), the Guide provides at page 20 that the HOA and HOA Trustee shall provide even in an NRS 107, et seq. sale, the following to the purchaser/the Trust at the HOA Foreclosure Sale:

> The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform the purchaser, in writing, as soon as practicable after discovery of the condition, or before conveyance of the property.
>
> The buyer may not waive, and the seller may not require a buyer to waive, any of the requirements of the disclosure as a condition of sale or for any other purpose.
>
> In a sale or intended sale by foreclosure, the trustee and the beneficiary of the deed of trust shall provide, not later than the conveyance of the property to, or upon request from, the buyer:
>
> > • written notice of any defects of which the trustee or beneficiary is aware
> >
> > . . .

98. If the HOA and/or HOA Trustee fails to provide the SRPDF to the Plaintiff/purchaser at the time of the HOA Foreclosure Sale, the Guide explains that:

> A Buyer may rescind the contract without penalty if he does not receive a fully and properly completed Seller's Real Property Disclosure form. If a Buyer closes a transaction without a completed form or if a known defect is not disclosed to a Buyer, the Buyer may be entitled to treble damages, unless the Buyer waives his rights under NRS 113.150(6).

99. Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the information set forth in the SRPDF to Plaintiff at the HOA Foreclosure Sale.

100. The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA Foreclosure Sale.

///

101. As a result of the HOA and HOA Trustee's failure to provide Plaintiff with the mandated SRPDF and disclosures required therein that were known to the HOA and HOA Trustee, Plaintiff has been economically damaged.

102. 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.

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

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages to be proven at trial in excess of $15,000;
2. For punitive damages in an amount to be determined at trial;
3. For an award of reasonable attorneys' fees as special damages, and otherwise under Nevada law;
4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
5. For such other and further relief that the Court deems just and proper.

DATED this _____ day of March, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2810 W. Charleston, Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorney for Plaintiff

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

EXHIBIT 1

SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner *(see NRS 113.130 and 113.140).*

Date_____ Do you currently occupy or have you ever occupied this property? YES ☐ NO ☐

Property address _____

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. *(NRS 113.130(3))*

Type of Seller: ☐Bank (financial institution); ☐Asset Management Company; ☐Owner-occupier; ☐Other:_____

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW *(see NRS 113.150).*

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System	☐	☐	☐
Plumbing	☐	☐	☐
Sewer System & line	☐	☐	☐
Septic tank & leach field	☐	☐	☐
Well & pump	☐	☐	☐
Yard sprinkler system(s)	☐	☐	☐
Fountain(s)	☐	☐	☐
Heating system	☐	☐	☐
Cooling system	☐	☐	☐
Solar heating system	☐	☐	☐
Fireplace & chimney	☐	☐	☐
Wood burning system	☐	☐	☐
Garage door opener.	☐	☐	☐
Water treatment system(s)	☐	☐	☐
owned.. ☐ leased.. ☐			
Water heater	☐	☐	☐
Toilet(s)	☐	☐	☐
Bathtub(s)	☐	☐	☐

	YES	NO	N/A
Shower(s)	☐	☐	☐
Sink(s)	☐	☐	☐
Sauna / hot tub(s)	☐	☐	☐
Built-in microwave	☐	☐	☐
Range / oven / hood-fan	☐	☐	☐
Dishwasher	☐	☐	☐
Garbage disposal	☐	☐	☐
Trash compactor	☐	☐	☐
Central vacuum	☐	☐	☐
Alarm system	☐	☐	☐
owned.. ☐ leased.. ☐			
Smoke detector	☐	☐	☐
Intercom	☐	☐	☐
Data Communication line(s)	☐	☐	☐
Satellite dish(es)	☐	☐	☐
owned.. ☐ leased.. ☐			
Other_____	☐	☐	☐

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

_____ _____ *Seller(s) Initials*

_____ _____ *Buyer(s) Initials*

Property conditions, improvements and additional information:	YES	NO	N/A
Are you aware of any of the following?:			
1. Structure:			
(a) Previous or current moisture conditions and/or water damage?	☐	☐	
(b) Any structural defect?	☐	☐	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?	☐	☐	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)	☐	☐	
2. Land / Foundation:			
(a) Any of the improvements being located on unstable or expansive soil?	☐	☐	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?	☐	☐	
(c) Any drainage, flooding, water seepage, or high water table?	☐	☐	
(d) The property being located in a designated flood plain?	☐	☐	
(e) Whether the property is located next to or near any known future development?	☐	☐	
(f) Any encroachments, easements, zoning violations or nonconforming uses?	☐	☐	
(g) Is the property adjacent to "open range" land? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)	☐	☐	
3. Roof: Any problems with the roof?	☐	☐	
4. Pool/spa: Any problems with structure, wall, liner, or equipment	☐	☐	☐
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)?	☐	☐	
6. Environmental:			
(a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property?	☐	☐	
(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Heath?	☐	☐	
7. Fungi / Mold: Any previous or current fungus or mold?	☐	☐	
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?	☐	☐	
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?	☐	☐	
(a) Common Interest Community Declaration and Bylaws available?	☐	☐	
(b) Any periodic or recurring association fees?	☐	☐	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?	☐	☐	
(d) Any litigation, arbitration, or mediation related to property or common area?	☐	☐	
(e) Any assessments associated with the property (excluding property taxes)?	☐	☐	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?	☐	☐	
10. Any problems with water quality or water supply?	☐	☐	
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?	☐	☐	
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? (If yes, additional Federal EPA notification and disclosure documents are required)	☐	☐	
13. Water source: Municipal ☐ Community Well ☐ Domestic Well ☐ Other ☐ If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐ Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.			
14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant?	☐	☐	
15. Solar panels: Are any installed on the property? If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐	☐	☐	
16. Wastewater disposal: Municipal Sewer ☐ Septic System ☐ Other ☐			
17. This property is subject to a Private Transfer Fee Obligation?	☐	☐	

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

_____ _____ *Seller(s) Initials*

_____ _____ *Buyer(s) Initials*

EXPLANATIONS: Any "Yes" to questions on pages 1 and 2 must be fully explained here. Attach additional pages if needed.

Seller(s) Initials *Buyer(s) Initials*

EXHIBIT 2

EXHIBIT 2

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust

Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation;

Defendants.

Case No..: A-19-791254-C
Dept.: ~~XXVII~~ 23

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNER'S ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT

On October 25, 2020, Defendant Green Valley South Association ("Green Valley" or the "HOA") filed its Motion to Dismiss, Or Alternatively Motion for Summary Judgment ("Motion"). On October 29, 2020, Defendant Nevada Association Services, Inc. ("NAS" or "Trustee") filed its Joinder to Green Valley's Motion. On November 9, 2020, Plaintiff Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. On November 24, 2020, Defendant Green Valley filed its Reply in Support of the Motion.

The Motion was heard on December 1, 2020 at 9:00 a.m. in the above captioned matter. Attorney Janeen V. Isaacson on behalf of Green Valley, attorney Brandon E. Wood on behalf of NAS, and attorney Roger Croteau appeared on behalf of Daisey Trust

participated by CourtCall conferencing and/or telephonic conference call.

The Court having reviewed the papers and pleadings, and having heard oral argument, issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to purchase the real property located at 137 Elegante Way, Henderson, Nevada 89074 ("Property").

2. The property was subject to the HOA's Covenants, Conditions and Restrictions "CC&Rs".

3. Sometime after purchasing the Property, Borrowers defaulted on their homeowners' assessments.

4. On August 23, 2011, the HOA, through NAS recorded a notice of delinquent assessment lien.

5. On November 18, 2011, the HOA, through its Trustee, recorded a notice of default and election to sell.

6. On February 2, 2012, Miles Bauer sent NAS a letter offering to pay $882 to discharge Green Valley's superpriority lien on the Property and included a check for that amount.

7. NAS rejected the offer on Green Valley's behalf.

8. Between February 2, 2012 and August 31, 2012, NAS' phone log indicates that it received no telephone inquiries from potential bidders asking if there had been a tender of the super priority lien with respect to the Property [GVS000222].

9. On April 23, 2012, the HOA, through its Trustee, recorded a notice of foreclosure sale.

10. On August 31, 2012, the HOA, through NAS, foreclosed on the Property and sold the Property to Daisey Trust for $3,555.

11. A foreclosure deed in favor Plaintiff Daisey Trust was recorded on September 7, 2012.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

12. On February 29, 2016, Bank of America, N.A., Successor By Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing (:"BANA") filed a Complaint against the HOA, NAS, and Daisey Trust, in the United States District Court, District of Nevada with case number 2:16-cv-00424-JCM-PAL (the "Federal Action").

13. The Federal Action found the Property was sold subject to the deed of trust.

14. On March 15, 2019, Daisey Trust filed the instant lawsuit against Green Valley and NAS alleging causes of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, Conspiracy, and Violation of NRS 113.

15. Daisey Trust argues the instant case is separate and distinct from the prior federal case involving the same property. Specifically, the gravamen of its argument is the Defendants cannot misrepresent tender or attempted tender if asked or omit material facts regarding tender or attempted tender.

16. In his declaration attached to the opposition, manager Eddie Haddad ("Haddad") states that had he known that there was a tender or attempted tender on the property, he would not have placed a bid on the property. His claim is general in nature and the declaration fails to assert any specific representations made or questions asked with respect to the Property. Furthermore, NAS' call log demonstrates that Defendants were not contacted ahead of the foreclosure sale, which contradicts his declaration in the instant case.

17. Haddad does not allege that Defendants made any active misrepresentation; rather, he alleges only that Defendants were guilty of "material omission of the tender and/or attempted payment of the superpriority lien amount", upon inquiry, by Haddad.

CONCLUSIONS OF LAW

1. "The purpose of summary judgment is to pierce the pleading and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita*

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Summary judgment is appropriate when pleadings, the discovery and disclosure materials on file, and any affidavits show "there is no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also *Celotex v. Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610, 894 P.2d 988 (1995).

2. The nonmoving party "may not rest upon the mere allegations or denials of [its] pleadings," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), nor may it "simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the nonmoving party's burden to "come forward with specific facts showing that there is a genuine issue for trial." *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82 (2002)."

3. An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248 (1986). Further, a dispute will only preclude the entry of summary judgment if it could affect the outcome of the suit under governing law. *Id.* "The amount of evidence necessary to raise a genuine issue of material fact is enough to require a judge or jury to resolve the parties' differing versions of the truth at trial." *Id.* at 249. In evaluating a summary judgment motion, a court views all facts and draws all inferences in a light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 100, 1103 (9th Cir. 1986). Where one "essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d at 592 (1992).

4. A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993).

5. "As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.*

6. NRCP 56(c)(1) provides, in pertinent part, "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." However, subsection (c)(2) further states that a party may object that the material cited to support or dispute a fact cannot be presented in "a form that would be admissible in evidence."

7. Summary judgment is "appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026 (2005). A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

8. All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14 (2002)).

9. A party cannot defeat summary judgment by contradicting itself. See *Aldabe v. Adams,* 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party).

10. Under the new NRCP 56(d), which is similar to old subsection (f), if the moving party fails to properly support facts necessary, the court may deny the motion or stay the motion to allow the parties to conduct discovery.

11. The Court FINDS because the motion involves evidence outside of the complaint, the motion must be treated as a motion for summary judgment.

Intentional/Negligent Misrepresentation

12. Haddad does not allege that Defendants made any active misrepresentation; rather, he alleges only that Defendants were guilty of "material omission of the tender and/or attempted payment of the superpriority lien amount", upon inquiry, by Haddad. However, under NRS 116.3116 at the time, Defendants do not have a duty to disclose tender. *See Noonan v. Bayview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 428, 438 P.3d 335, 2019 WL 1552690, citing: "*See Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or 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)." *See also A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019) (unpublished). *See Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) *unpublished disposition*; *See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished Disposition.*

13. Although the HOA or HOA agent does not have to disclose tender under the statute, as a misrepresentation claim the HOA or HOA Agent could have taken actions which created the duty to disclose tender. However, Haddad relies on the omission during bidding at the sale. Even though discovery had not concluded, there

appears to be no genuine issue of material fact. Haddad's declaration, which attempts to raise genuine issues of material fact appears to be based "on the gossamer threads of whimsy, speculation, and conjecture". *See Wood v. Safeway, Inc.* Additionally, NAS' call log demonstrate that Haddad did not contact them prior to sale to inquire as to any tender.

14. Plaintiff fails to allege what evidence, if any, can be obtained in discovery to raise genuine issues of material fact. Thus, NRCP 56(d) relief is not appropriate. Thus, Plaintiff cannot show that there is any genuine issue of material fact and thus, Defendants are entitled to summary judgment as a matter of law.

Breach of NRS 116

15. For similar reasons Defendants are entitled to summary judgment on the Breach of NRS 116 claim. To establish a claim for misrepresentation, the plaintiff carries the burden of proving each of the following elements: (1) a false representation was made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441, 447 (Nev.,1998). The HOA or HOA's Agent are not required to announce tender at the HOA foreclosure sale. *See Noonan (Comparing NRS 116.31162(1)(b)(3)(II) (2017), with NRS 116.31162 (2013))*, and *see A Oro. See Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve*

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Court Homeowners Association, et. al. (Case No. 80135) (October 16, 2020) *unpublished disposition*; *See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished Disposition.* Further, neither Green Valley or NAS made any misrepresentations to Plaintiff or otherwise violate any duties to Plaintiff in conducting the sale.

16. NRS 116.1113 imposes a duty of good faith in the performance of every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. The HOA complied with these duties by complying with all notice and recording requirements set forth in NRS 116 as it existed at the time of the sale. The HOA was not required to disclose the existence of a pre-sale tender of the superpriority portion of the lien. Further, it was specifically prohibited from giving any purchaser at auction a so-called warranty deed. The only type of deed it could give to any purchaser was one made "without warranty" pursuant to NRS 116.31164(3)(a).

Violation of NRS 113

17. Defendants are entitled to summary judgment on Plaintiff's claim for violation of NRS 113. Plaintiff asserts in its Complaint that the HOA or HOA Agent needed to complete a Seller's Real Property Disclosure Form ("SRPDF").

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

18. The bank's pre-sale tender does not fit into any of the disclosure categories contemplated by NRS 113. See generally id. It is not a water or sewage service, nor does it involve open range liability, zoning classifications, gaming enterprise districts, or transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It also does not qualify as the discovery or worsening of a defect subject to disclosure under NRS 113.130.

19. A "defect" is defined as "a condition that materially affects the value or use of residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1). The key to disclosure under this section is the seller's realization, perception, and knowledge of the alleged defect. *See Nelson v. Heer*, 123 Nev. at 224; see also Nev. Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is unaware. Id.

20. Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes suggest the Seller's Real Property Disclosure Form ("SRPDF") should be supplied in NRS 116 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure Guide (the "Guide") suggests Defendants should supply the SRPDF. However, the actual Guide does not ever refer to the HOA or HOA Agent as possible sellers for which the SRPDF might apply or refer to a HOA foreclosure sale, or suggest the SRPDF applies to NRS 116 Foreclosure Sales.

25. The Guide suggests to protect oneself from a faulty SRPDF in buying a home, "[t]he Buyer is advised to obtain an independent inspection performed by a properly licensed home inspector." NRS 116 foreclosure properties are not open for inspection prior to sale, and NRS 116 foreclosure homes may be occupied, for which the buyer assumes the responsibility.

26. A recent unpublished decision from the Nevada Supreme Court appears to support that NRS 113.130 ~~requires~~ does not a seller to disclose superpriority tenders. ~~or that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.~~ *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) (Unpublished).

ORDER

The Court GRANTS Defendant's Motion for Summary Judgment and Joinder thereto.

Dated this 5th day of ~~January~~ February, 2021.

~~HONORABLE MARY KAY HOLTHUS~~
HONORABLE JASMIN LILLY-SPELLS

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No.6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Green Valley Ranch South Owner's Association

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

/s/ Roger P. Croteau

Roger P. Croteau, Esq. (Bar No. 4958)
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff, Daisy Trust

Approved as to form and content

NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
Attorneys for Nevada Association Services, Inc.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, January 27, 2021 1:39 PM
To: Janeen Isaacson
Cc: Renee Rittenhouse
Subject: RE: MSJorder_NAS REVISED (002)

Agreed, Brandon's changes look fine.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Wednesday, January 27, 2021 1:37 PM
To: Chris Benner <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: MSJorder_NAS REVISED (002)

Brandon had a few changes. I forgot he joined so he has to be added. His changes do not impact yours. If issue, let me know. Otherwise sending to Court with Brandon's changes.

Renee Rittenhouse

From: Janeen Isaacson
Sent: Wednesday, January 27, 2021 1:29 PM
To: Renee Rittenhouse
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)
Attachments: MSJorder_NAS REVISED.DOC

From: Brandon Wood <brandon@nas-inc.com>
Sent: Wednesday, January 27, 2021 1:24 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Cc: Susan Moses <susanm@nas-inc.com>
Subject: [MACRO WARNING] FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please see attached. Susan informed me you could not open the attachment. Let me know if you have any questions.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Brandon Wood
Sent: Friday, January 22, 2021 2:11 PM

To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please find NAS' minor revisions. Please let me know if acceptable.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]
Sent: Friday, January 22, 2021 12:58 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>; croteaulaw@croteaulaw.com; Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Everyone,

Can both Plaintiff and NAS send an email affirmatively approving the revised Order and agreeing to affix your signature. We will send to the Court for signature.

Sincerely,

Lipson|Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Friday, January 22, 2021 12:01 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Please see attached order with the addition of counsel for NAS.

Thank you,

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Thursday, January 21, 2021 12:15 PM
To: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Cc: Susan Moses <susanm@nas-inc.com>
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Renee, can you take our approved draft from Roger, add NAS to it so they can sign it for approval as well. Then submit it as instructed to the Court. Thanks.

From: Roberson, Anise <Dept23LC@clarkcountycourts.us>
Sent: Thursday, January 21, 2021 12:09 PM
To: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Cc: Anderson, Glenn <Dept18LC@clarkcountycourts.us>; Janeen Isaacson <JIsaacson@lipsonneilson.com>; rcroteau@croteaulaw.com
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Good afternoon,

Thank you for submitting the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

All documents submitted for Judge Lilly-Spells' signature should be sent to DC23Inbox@clarkcountycourts.us for proper review and signature; please resubmit and we will review and get it signed.

Thank you again,

Anise Roberson
Law Clerk to the Honorable Jasmin Lilly-Spells
Eighth Judicial District Court Dept. 23
Telephone: 702-671-0585
Fax: 702-671-0589
Email: Dept23lc@clarkcountycourts.us

PLEASE NOTE:

- The DC23Inbox@clarkcountycourts.us email is to be used **ONLY** for the purpose of submitting documents for Judge Lilly-Spells' signature.
- All documents submitted must be attached in both Word and .pdf format, with an email from counsel approving the use of their electronic signature.
- The email subject line must contain the full case number, filing event code, and the name of the document (i.e. "A-20-123456-C – ORDR – Smith v. Doe")

If you need to email Department 23 regarding a calendar issue, or any matter other than submitting a document for Judge Lilly-Spells' signature, your email must be sent to BoyerD@clarkcountycourts.us and Dept23LC@clarkcountycourts.us.

From: Renee Rittenhouse [mailto:RRittenhouse@lipsonneilson.com]
Sent: Monday, January 18, 2021 11:44 AM
To: Roberson, Anise
Cc: Anderson, Glenn; Janeen Isaacson; rcroteau@croteaulaw.com
Subject: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

To all:

On behalf of Janeen Isaacson, please find attached the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment with reference to the above-captioned matter.

Also, please confirm that the Order to Show Cause Hearing originally set for Tuesday, January 19, 2021 at 9:00 a.m. has been moved to Thursday, January 28, 2021 at 3:00 a.m.

Should you have any questions, please feel free to contact Ms. Isaacson directly.

Thank you,

LAW OFFICES

Lipson | Neilson

Attorneys and Counselors at Law

Renee M. Rittenhouse
Paralegal
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
Website: www.lipsonneilson.com
OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

EXHIBIT 3

EXHIBIT 3

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust Plaintiff, vs. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation; Defendants.	Case No..: A-19-791254-C Dept.: XVIII **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNERS ASSOCIATION'S MOTION TO DISMISS OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT**

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owners Association's Motion to Dismiss, or Alternatively Motion for Summary Judgement was filed with the court this 5th day of February, 2021, a copy of which is attached.

DATED this 16th day of February 2021.

LIPSON NEILSON P.C.

/s/ Janeen Isaacson

By: _____

J. William Ebert, Esq. (Bar No. 2697)
Janeen V. Isaacson, Esq. (Bar No. 6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant,
Green Valley South Owners Association

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 16th day of February, 2021, I electronically transmitted the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNERS ASSOCIATION'S MOTION TO DISMISS OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Brandon D. Wood, Esq. NEVADA ASSOCIATION SERVICES, INC. 6625 S. Valley View Blvd., Suite 300 Las Vegas, Nevada 89118 *Attorney for Nevada Association Services, Inc.*	Roger P. Croteau, Esq. Timothy E. Rhoda, Esq. ROGER P. CROTEAU & ASSOCIATES, LTD. 2810 W. Charleston Blvd., Suite 75 Las Vegas, NV 89148 *Attorneys for Plaintiff Daisy Trust*

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON P.C.

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust

Plaintiff,

vs.

GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation;

Defendants.

Case No..: A-19-791254-C
Dept.: ~~XXVII~~ 23

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNER'S ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT

On October 25, 2020, Defendant Green Valley South Association ("Green Valley" or the "HOA") filed its Motion to Dismiss, Or Alternatively Motion for Summary Judgment ("Motion"). On October 29, 2020, Defendant Nevada Association Services, Inc. ("NAS" or "Trustee") filed its Joinder to Green Valley's Motion. On November 9, 2020, Plaintiff Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. On November 24, 2020, Defendant Green Valley filed its Reply in Support of the Motion.

The Motion was heard on December 1, 2020 at 9:00 a.m. in the above captioned matter. Attorney Janeen V. Isaacson on behalf of Green Valley, attorney Brandon E. Wood on behalf of NAS, and attorney Roger Croteau appeared on behalf of Daisey Trust

participated by CourtCall conferencing and/or telephonic conference call.

The Court having reviewed the papers and pleadings, and having heard oral argument, issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On June 5, 2008, Dennis L. Scott ("Borrower") obtained a loan to purchase the real property located at 137 Elegante Way, Henderson, Nevada 89074 ("Property").

2. The property was subject to the HOA's Covenants, Conditions and Restrictions "CC&Rs".

3. Sometime after purchasing the Property, Borrowers defaulted on their homeowners' assessments.

4. On August 23, 2011, the HOA, through NAS recorded a notice of delinquent assessment lien.

5. On November 18, 2011, the HOA, through its Trustee, recorded a notice of default and election to sell.

6. On February 2, 2012, Miles Bauer sent NAS a letter offering to pay $882 to discharge Green Valley's superpriority lien on the Property and included a check for that amount.

7. NAS rejected the offer on Green Valley's behalf.

8. Between February 2, 2012 and August 31, 2012, NAS' phone log indicates that it received no telephone inquiries from potential bidders asking if there had been a tender of the super priority lien with respect to the Property [GVS000222].

9. On April 23, 2012, the HOA, through its Trustee, recorded a notice of foreclosure sale.

10. On August 31, 2012, the HOA, through NAS, foreclosed on the Property and sold the Property to Daisey Trust for $3,555.

11. A foreclosure deed in favor Plaintiff Daisey Trust was recorded on September 7, 2012.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

12. On February 29, 2016, Bank of America, N.A., Successor By Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing (:"BANA") filed a Complaint against the HOA, NAS, and Daisey Trust, in the United States District Court, District of Nevada with case number 2:16-cv-00424-JCM-PAL (the "Federal Action").

13. The Federal Action found the Property was sold subject to the deed of trust.

14. On March 15, 2019, Daisey Trust filed the instant lawsuit against Green Valley and NAS alleging causes of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, Conspiracy, and Violation of NRS 113.

15. Daisey Trust argues the instant case is separate and distinct from the prior federal case involving the same property. Specifically, the gravamen of its argument is the Defendants cannot misrepresent tender or attempted tender if asked or omit material facts regarding tender or attempted tender.

16. In his declaration attached to the opposition, manager Eddie Haddad ("Haddad") states that had he known that there was a tender or attempted tender on the property, he would not have placed a bid on the property. His claim is general in nature and the declaration fails to assert any specific representations made or questions asked with respect to the Property. Furthermore, NAS' call log demonstrates that Defendants were not contacted ahead of the foreclosure sale, which contradicts his declaration in the instant case.

17. Haddad does not allege that Defendants made any active misrepresentation; rather, he alleges only that Defendants were guilty of "material omission of the tender and/or attempted payment of the superpriority lien amount", upon inquiry, by Haddad.

CONCLUSIONS OF LAW

1. "The purpose of summary judgment is to pierce the pleading and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita*

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Summary judgment is appropriate when pleadings, the discovery and disclosure materials on file, and any affidavits show "there is no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law." Nev. R. Civ. P. 56(b); see also *Celotex v. Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610, 894 P.2d 988 (1995).

2. The nonmoving party "may not rest upon the mere allegations or denials of [its] pleadings," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), nor may it "simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the nonmoving party's burden to "come forward with specific facts showing that there is a genuine issue for trial." *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82 (2002)."

3. An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248 (1986). Further, a dispute will only preclude the entry of summary judgment if it could affect the outcome of the suit under governing law. *Id.* "The amount of evidence necessary to raise a genuine issue of material fact is enough to require a judge or jury to resolve the parties' differing versions of the truth at trial." *Id.* at 249. In evaluating a summary judgment motion, a court views all facts and draws all inferences in a light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 100, 1103 (9th Cir. 1986). Where one "essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper." *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d at 592 (1992).

4. A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CAN, Insurance Co.*, 109 Nev. 1075 (1993).

5. "As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.*

6. NRCP 56(c)(1) provides, in pertinent part, "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." However, subsection (c)(2) further states that a party may object that the material cited to support or dispute a fact cannot be presented in "a form that would be admissible in evidence."

7. Summary judgment is "appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026 (2005). A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*

8. All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14 (2002)).

9. A party cannot defeat summary judgment by contradicting itself. See *Aldabe v. Adams,* 81 Nev. 280, 284–85, 402 P.2d 34, 36–37 (1965) (refusing to credit sworn statement made in opposition to summary judgment that was in direct conflict with an earlier statement of the same party).

10. Under the new NRCP 56(d), which is similar to old subsection (f), if the moving party fails to properly support facts necessary, the court may deny the motion or stay the motion to allow the parties to conduct discovery.

11. The Court FINDS because the motion involves evidence outside of the complaint, the motion must be treated as a motion for summary judgment.

Intentional/Negligent Misrepresentation

12. Haddad does not allege that Defendants made any active misrepresentation; rather, he alleges only that Defendants were guilty of "material omission of the tender and/or attempted payment of the superpriority lien amount", upon inquiry, by Haddad. However, under NRS 116.3116 at the time, Defendants do not have a duty to disclose tender. *See Noonan v. Bayview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 428, 438 P.3d 335, 2019 WL 1552690, citing: "*See Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or 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)." *See also A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019) (unpublished). *See Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) *unpublished disposition*; *See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished Disposition.*

13. Although the HOA or HOA agent does not have to disclose tender under the statute, as a misrepresentation claim the HOA or HOA Agent could have taken actions which created the duty to disclose tender. However, Haddad relies on the omission during bidding at the sale. Even though discovery had not concluded, there

appears to be no genuine issue of material fact. Haddad's declaration, which attempts to raise genuine issues of material fact appears to be based "on the gossamer threads of whimsy, speculation, and conjecture". *See Wood v. Safeway, Inc.* Additionally, NAS' call log demonstrate that Haddad did not contact them prior to sale to inquire as to any tender.

14. Plaintiff fails to allege what evidence, if any, can be obtained in discovery to raise genuine issues of material fact. Thus, NRCP 56(d) relief is not appropriate. Thus, Plaintiff cannot show that there is any genuine issue of material fact and thus, Defendants are entitled to summary judgment as a matter of law.

Breach of NRS 116

15. For similar reasons Defendants are entitled to summary judgment on the Breach of NRS 116 claim. To establish a claim for misrepresentation, the plaintiff carries the burden of proving each of the following elements: (1) a false representation was made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441, 447 (Nev.,1998). The HOA or HOA's Agent are not required to announce tender at the HOA foreclosure sale. *See Noonan (Comparing NRS 116.31162(1)(b)(3)(II) (2017), with NRS 116.31162 (2013))*, and *see A Oro. See Saticoy Bay, LLC, Series 11339 Colinward, A Nevada Limited Liability Company vs. Travata and Montage at Summerlin Centre Homeowners Association, et. al.* (Case No. 80162) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve*

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Court Homeowners Association, et. al. (Case No. 80135) (October 16, 2020) *unpublished disposition*; *See Saticoy Bay, LLC, Series 8320 Bermuda Beach, A Nevada Limited Liability Company vs. South Shores Community Homeowners Association, et. al.* (Case No. 80165) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 6408 Hillside Brook, A Nevada Limited Liability Company vs. Mountain Gate Homeowners Association, et. al.* (Case No. 80134) (October 16, 2020) *Unpublished Disposition*; *See Saticoy Bay, LLC, Series 8920 El Diablo, A Nevada Limited Liability Company vs. Silverstone Ranch Homeowners Association, et. al.* (Case No. 80039) (October 16, 2020) *Unpublished Disposition.* Further, neither Green Valley or NAS made any misrepresentations to Plaintiff or otherwise violate any duties to Plaintiff in conducting the sale.

16. NRS 116.1113 imposes a duty of good faith in the performance of every contract or duty governed by the statute. Nev. Rev. Stat. § 116.1113. The HOA complied with these duties by complying with all notice and recording requirements set forth in NRS 116 as it existed at the time of the sale. The HOA was not required to disclose the existence of a pre-sale tender of the superpriority portion of the lien. Further, it was specifically prohibited from giving any purchaser at auction a so-called warranty deed. The only type of deed it could give to any purchaser was one made "without warranty" pursuant to NRS 116.31164(3)(a).

Violation of NRS 113

17. Defendants are entitled to summary judgment on Plaintiff's claim for violation of NRS 113. Plaintiff asserts in its Complaint that the HOA or HOA Agent needed to complete a Seller's Real Property Disclosure Form ("SRPDF").

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

18. The bank's pre-sale tender does not fit into any of the disclosure categories contemplated by NRS 113. See generally id. It is not a water or sewage service, nor does it involve open range liability, zoning classifications, gaming enterprise districts, or transfer fee obligations. See Nev. Rev. Stat. §§ 113.060 through 113.085. It also does not qualify as the discovery or worsening of a defect subject to disclosure under NRS 113.130.

19. A "defect" is defined as "a condition that materially affects the value or use of residential property in an adverse manner." See Nev. Rev. Stat. § NRS 113.100(1). The key to disclosure under this section is the seller's realization, perception, and knowledge of the alleged defect. *See Nelson v. Heer*, 123 Nev. at 224; see also Nev. Rev. Stat. §113.140(1). A seller is not required to disclose defects of which he is unaware. Id.

20. Furthermore, nowhere in either NRS 113 or NRS 116 do the statutes suggest the Seller's Real Property Disclosure Form ("SRPDF") should be supplied in NRS 116 foreclosure sales. Plaintiff further alleges that the "Residential Disclosure Guide (the "Guide") suggests Defendants should supply the SRPDF. However, the actual Guide does not ever refer to the HOA or HOA Agent as possible sellers for which the SRPDF might apply or refer to a HOA foreclosure sale, or suggest the SRPDF applies to NRS 116 Foreclosure Sales.

25. The Guide suggests to protect oneself from a faulty SRPDF in buying a home, "[t]he Buyer is advised to obtain an independent inspection performed by a properly licensed home inspector." NRS 116 foreclosure properties are not open for inspection prior to sale, and NRS 116 foreclosure homes may be occupied, for which the buyer assumes the responsibility.

26. A recent unpublished decision from the Nevada Supreme Court appears to support that NRS 113.130 ~~requires~~ does not a seller to disclose superpriority tenders. ~~or that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.~~ *See Saticoy Bay, LLC, Series 3123 Inlet Bay vs. Genevieve Court Homeowners Association, et. al.* (Case No. 80135) (October 16, 2020) (Unpublished).

ORDER

The Court GRANTS Defendant's Motion for Summary Judgment and Joinder thereto.

Dated this 5th day of ~~January~~ February, 2021.

~~HONORABLE MARY KAY HOLTHUS~~
HONORABLE JASMIN LILLY-SPELLS

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No.6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Green Valley Ranch South Owner's Association

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

/s/ Roger P. Croteau

Roger P. Croteau, Esq. (Bar No. 4958)
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff, Daisy Trust

Approved as to form and content

NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
Attorneys for Nevada Association Services, Inc.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, January 27, 2021 1:39 PM
To: Janeen Isaacson
Cc: Renee Rittenhouse
Subject: RE: MSJorder_NAS REVISED (002)

Agreed, Brandon's changes look fine.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Wednesday, January 27, 2021 1:37 PM
To: Chris Benner <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: MSJorder_NAS REVISED (002)

Brandon had a few changes. I forgot he joined so he has to be added. His changes do not impact yours. If issue, let me know. Otherwise sending to Court with Brandon's changes.

Renee Rittenhouse

From: Janeen Isaacson
Sent: Wednesday, January 27, 2021 1:29 PM
To: Renee Rittenhouse
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)
Attachments: MSJorder_NAS REVISED.DOC

From: Brandon Wood <brandon@nas-inc.com>
Sent: Wednesday, January 27, 2021 1:24 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Cc: Susan Moses <susanm@nas-inc.com>
Subject: [MACRO WARNING] FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please see attached. Susan informed me you could not open the attachment. Let me know if you have any questions.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Brandon Wood
Sent: Friday, January 22, 2021 2:11 PM

To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Janeen,

Please find NAS' minor revisions. Please let me know if acceptable.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]
Sent: Friday, January 22, 2021 12:58 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>; croteaulaw@croteaulaw.com; Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Everyone,

Can both Plaintiff and NAS send an email affirmatively approving the revised Order and agreeing to affix your signature. We will send to the Court for signature.

Sincerely,

Lipson|Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Friday, January 22, 2021 12:01 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Please see attached order with the addition of counsel for NAS.

Thank you,

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Thursday, January 21, 2021 12:15 PM
To: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Cc: Susan Moses <susanm@nas-inc.com>
Subject: FW: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Renee, can you take our approved draft from Roger, add NAS to it so they can sign it for approval as well. Then submit it as instructed to the Court. Thanks.

From: Roberson, Anise <Dept23LC@clarkcountycourts.us>
Sent: Thursday, January 21, 2021 12:09 PM
To: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Cc: Anderson, Glenn <Dept18LC@clarkcountycourts.us>; Janeen Isaacson <JIsaacson@lipsonneilson.com>; rcroteau@croteaulaw.com
Subject: RE: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

Good afternoon,

Thank you for submitting the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

All documents submitted for Judge Lilly-Spells' signature should be sent to DC23Inbox@clarkcountycourts.us for proper review and signature; please resubmit and we will review and get it signed.

Thank you again,

Anise Roberson
Law Clerk to the Honorable Jasmin Lilly-Spells
Eighth Judicial District Court Dept. 23
Telephone: 702-671-0585
Fax: 702-671-0589
Email: Dept23lc@clarkcountycourts.us

PLEASE NOTE:

- The DC23Inbox@clarkcountycourts.us email is to be used **ONLY** for the purpose of submitting documents for Judge Lilly-Spells' signature.
- All documents submitted must be attached in both Word and .pdf format, with an email from counsel approving the use of their electronic signature.
- The email subject line must contain the full case number, filing event code, and the name of the document (i.e. "A-20-123456-C – ORDR – Smith v. Doe")

If you need to email Department 23 regarding a calendar issue, or any matter other than submitting a document for Judge Lilly-Spells' signature, your email must be sent to BoyerD@clarkcountycourts.us and Dept23LC@clarkcountycourts.us.

From: Renee Rittenhouse [mailto:RRittenhouse@lipsonneilson.com]
Sent: Monday, January 18, 2021 11:44 AM
To: Roberson, Anise
Cc: Anderson, Glenn; Janeen Isaacson; rcroteau@croteaulaw.com
Subject: Daisey Trust v. Green Valley South Owners Association No. 1, et al (A-19-791254-C)

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

To all:

On behalf of Janeen Isaacson, please find attached the Findings of Fact, Conclusions of Law and Order on Green Valley South's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment with reference to the above-captioned matter.

Also, please confirm that the Order to Show Cause Hearing originally set for Tuesday, January 19, 2021 at 9:00 a.m. has been moved to Thursday, January 28, 2021 at 3:00 a.m.

Should you have any questions, please feel free to contact Ms. Isaacson directly.

Thank you,

LAW OFFICES

Lipson | Neilson

Attorneys and Counselors at Law

Renee M. Rittenhouse
Paralegal
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
Website: www.lipsonneilson.com
OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

EXHIBIT 4

EXHIBIT 4

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust Plaintiff, vs. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation; Defendants.	Case No..: A-19-791254-C Dept.: XXIII **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNER'S ASSOCIATION'S MOTION FOR ATTORNEY'S FEES AND COSTS**

On February 23, 2021, Defendant Green Valley South Owners Association No. 1 ("Green Valley" or the "HOA") filed its Motion for Attorney's Fees and Costs ("Motion"). On March 9, 2021, Plaintiff Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. The parties submitted the matter to the Court in chambers.

The Court having reviewed the papers and pleadings, issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On February 4, 2021, the Court filed a Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to

Dismiss or Alternatively, Motion for Summary Judgment granting the Motion and dismissing the lawsuit. The Findings of Fact and Conclusions of Law contained therein are incorporated by reference.

2. The Court inadvertently filed the Findings of Fact, Conclusions of Law and Order regarding Defendant's Motion to Dismiss or Alternatively Motion for Summary Judgement on February 4, 2021 and February 5, 2021.

3. The Notice of Entry of Findings of Fact, Conclusions of Law and Order enclosing a copy of the Court's Order regarding Defendant's Motion to Dismiss or Alternatively Motion for Summary Judgement was filed on February 16, 2021.

4. Defendant's expense report contained a request for $930.69 in costs associated with the case.

CONCLUSIONS OF LAW

1. While NRS 116.4117 provides that any person may bring a civil action for damages or other appropriate relief for the failure to comply with NRS Chapter 116 or Covenants, Conditions and Restrictions (CC&R's), the Court finds that the instant case did not arise from a failure to comply with NRS Chapter 116 or the HOA's CC&R's and thereby Defendant is not a person whom the statute was meant to protect.

2. NRS 18.010(2) allows for the award of attorney's fees to prevailing parties when: (1) the prevailing party has not recovered more than $20,000 or (2) the Court finds that the opposing party brought or maintained litigation without reasonable ground or to harass the prevailing party. A prevailing party is required to obtain a monetary judgment for recovery of attorney fees under NRS 18.010(2)(a). Singer v. Chase Manhattan Bank, 111 Nev. 289, 294, 890 P.2d 1305, 1308 (1995). In the instant matter, Defendant did not obtain a monetary judgment.

3. Further, if this Court were to find that attorney fees were awardable, Defendant has presented billing for three (3) people but only presented a Brunzell analysis for one (1) In determining the amount of an award for attorney fees, the Court looks to: (1) the qualities of the advocate: his/her ability, his/her training, education,

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Absent a Brunzell analysis for each person for whose services Defendant seeks an award, this Court cannot grant attorney fees for those persons.

5. A party who receives favor in a judgment and seeks costs must file a request for costs and serve a copy of the request for costs upon the adverse party, within five (5) days after the entry of judgment or at a further time as the Court or Judge grants. NRS 18.110. Defendant's Motion for Attorney's Fees and Costs was untimely; however the Court has discretion to decide the motion on its merits. NRS 18.110. NRS 18.020(1) states that costs must be granted to the prevailing party against any adverse party against whom judgment is rendered in an action for the recovery of real property or a possessory right thereto.

6. The determination of allowable costs is within the sound discretion of the trial Court. However, statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law." Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). Pursuant to NRS 18.005, costs must be reasonable. Reasonable costs must be actual and reasonable not a reasonable estimate or calculation of such costs. Gibellini, 110 Nev. at 1206, 885 P.2d at 543." Bobby Berosini, A-19-791254-C PRINT DATE: 05/17/2021 Page 3 of 3 Minutes Date: April 15, 2021 Ltd. v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998). The decision to award attorney's fees is within the sound

discretion of the trial Court. Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) Defendant's expert report, in light of NRS 18.005, is reasonable under statute.

ORDER

Defendant's Motion for Attorney Fees is **DENIED** but Defendant's Motion for Costs is **GRANTED** in the amount of $930.69.

Dated this _____ day of June, 2021.

Dated this 28th day of July, 2021

HONORABLE JASMIN LILLY-SPELLS

E28 58E 32AB BCDF
Jasmin Lilly-Spells
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No.6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Green Valley Ranch South Owner's Association

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

Christopher L. Benner

Roger P. Croteau, Esq. (Bar No. 4958)
Christopher L. Benner, Esq., (Bar No. 8963)
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff, Daisy Trust

Approved as to form and content

NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
Attorneys for Nevada Association Services, Inc.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Renee Rittenhouse

From: Janeen Isaacson
Sent: Friday, June 11, 2021 1:36 PM
To: Renee Rittenhouse
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes - A-19-791254-C

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, June 11, 2021 1:36 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>; Susan Moses <susanm@nas-inc.com>
Subject: RE: FFCL Order on Motion for Attorney Fees and Costs - red lined changes - A-19-791254-C

Janeen,

You may use my electronic signature.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]
Sent: Friday, June 11, 2021 1:16 PM

To: Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Brandon and Susan,

Can you approve the language?

From: Janeen Isaacson
Sent: Wednesday, June 9, 2021 4:21 PM
To: Renee Rittenhouse <rrittenhouse@lipsonneilson.com>
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Please see below.

From: Janeen Isaacson
Sent: Wednesday, June 9, 2021 4:19 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>
Subject: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Roger and Chris,

Attached please see the proposed Order in the above referenced matter. Can you let me know if it's ok to submit to the Court.

Sincerely,

Lipson|Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

Renee Rittenhouse

From: Janeen Isaacson
Sent: Thursday, June 10, 2021 8:04 PM
To: Renee Rittenhouse
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Follow Up Flag: Follow up
Flag Status: Flagged

Please submit to the Court tomorrow. Thanks.

From: Chris Benner <chris@croteaulaw.com>
Sent: Thursday, June 10, 2021 7:32 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Yes, please submit with my e-signature. Thank you.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Wednesday, June 09, 2021 4:19 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; Chris Benner <chris@croteaulaw.com>
Subject: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Roger and Chris,

Attached please see the proposed Order in the above referenced matter. Can you let me know if it's ok to submit to the Court.

Sincerely,

Lipson | Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Daisy Trust, Plaintiff(s) vs. Green Valley South Owners Association No. 1, Defendant(s)	CASE NO: A-19-791254-C DEPT. NO. Department 23

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/28/2021

J. William Ebert	bebert@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Brandon Wood	brandon@nas-inc.com
Roger Croteau	croteaulaw@croteaulaw.com
Susan Moses	susanm@nas-inc.com
Croteau Admin	receptionist@croteaulaw.com
Janeen Isaacson	JIsaacson@lipsonneilson.com
Christopher Benner	chris@croteaulaw.com

EXHIBIT 5

EXHIBIT 5

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust Plaintiff, vs. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation; Defendants.	Case No..: A-19-791254-C Dept.: XVIII **NOTICE OF ENTRY ORDER**

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owners Association's Motion for Attorney's Fees and Costs was filed with the court this 28th day of July, 2021, a copy of which is attached.

DATED this 3rd day of August, 2021.

LIPSON NEILSON P.C.

By: /s/ Janeen Isaacson
_____

J. William Ebert, Esq. (Bar No. 2697)
Janeen V. Isaacson, Esq. (Bar No. 6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant,
Green Valley South Owners Association

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 3rd day of August, 2021, I electronically transmitted the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNERS ASSOCIATION'S MOTION FOR ATTORNEY'S FEES AND COSTS** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Brandon D. Wood, Esq. NEVADA ASSOCIATION SERVICES, INC. 6625 S. Valley View Blvd., Suite 300 Las Vegas, Nevada 89118 *Attorney for Nevada Association Services, Inc.*	Roger P. Croteau, Esq. Timothy E. Rhoda, Esq. ROGER P. CROTEAU & ASSOCIATES, LTD. 2810 W. Charleston Blvd., Suite 75 Las Vegas, NV 89148 *Attorneys for Plaintiff Daisy Trust*

Renee M. Rittenhouse

An Employee of LIPSON NEILSON P.C.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 - Facsimile
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com

Attorneys for Defendant,
Green Valley South Owner's Association

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISEY TRUST, a Nevada trust Plaintiff, vs. GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, a Nevada non-profit corporation; and NEVADA ASSOCIATION SERVICES, INC., a domestic corporation; Defendants.	Case No..: A-19-791254-C Dept.: XXIII **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DEFENDANT GREEN VALLEY SOUTH OWNER'S ASSOCIATION'S MOTION FOR ATTORNEY'S FEES AND COSTS**

On February 23, 2021, Defendant Green Valley South Owners Association No. 1 ("Green Valley" or the "HOA") filed its Motion for Attorney's Fees and Costs ("Motion"). On March 9, 2021, Plaintiff Daisey Trust ("Daisey Trust") filed its Opposition to the Motion. The parties submitted the matter to the Court in chambers.

The Court having reviewed the papers and pleadings, issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On February 4, 2021, the Court filed a Findings of Fact, Conclusions of Law and Order on Defendant Green Valley South Owner's Association's Motion to

Dismiss or Alternatively, Motion for Summary Judgment granting the Motion and dismissing the lawsuit. The Findings of Fact and Conclusions of Law contained therein are incorporated by reference.

2. The Court inadvertently filed the Findings of Fact, Conclusions of Law and Order regarding Defendant's Motion to Dismiss or Alternatively Motion for Summary Judgement on February 4, 2021 and February 5, 2021.

3. The Notice of Entry of Findings of Fact, Conclusions of Law and Order enclosing a copy of the Court's Order regarding Defendant's Motion to Dismiss or Alternatively Motion for Summary Judgement was filed on February 16, 2021.

4. Defendant's expense report contained a request for $930.69 in costs associated with the case.

CONCLUSIONS OF LAW

1. While NRS 116.4117 provides that any person may bring a civil action for damages or other appropriate relief for the failure to comply with NRS Chapter 116 or Covenants, Conditions and Restrictions (CC&R's), the Court finds that the instant case did not arise from a failure to comply with NRS Chapter 116 or the HOA's CC&R's and thereby Defendant is not a person whom the statute was meant to protect.

2. NRS 18.010(2) allows for the award of attorney's fees to prevailing parties when: (1) the prevailing party has not recovered more than $20,000 or (2) the Court finds that the opposing party brought or maintained litigation without reasonable ground or to harass the prevailing party. A prevailing party is required to obtain a monetary judgment for recovery of attorney fees under NRS 18.010(2)(a). Singer v. Chase Manhattan Bank, 111 Nev. 289, 294, 890 P.2d 1305, 1308 (1995). In the instant matter, Defendant did not obtain a monetary judgment.

3. Further, if this Court were to find that attorney fees were awardable, Defendant has presented billing for three (3) people but only presented a Brunzell analysis for one (1) In determining the amount of an award for attorney fees, the Court looks to: (1) the qualities of the advocate: his/her ability, his/her training, education,

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Absent a Brunzell analysis for each person for whose services Defendant seeks an award, this Court cannot grant attorney fees for those persons.

5. A party who receives favor in a judgment and seeks costs must file a request for costs and serve a copy of the request for costs upon the adverse party, within five (5) days after the entry of judgment or at a further time as the Court or Judge grants. NRS 18.110. Defendant's Motion for Attorney's Fees and Costs was untimely; however the Court has discretion to decide the motion on its merits. NRS 18.110. NRS 18.020(1) states that costs must be granted to the prevailing party against any adverse party against whom judgment is rendered in an action for the recovery of real property or a possessory right thereto.

6. The determination of allowable costs is within the sound discretion of the trial Court. However, statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law." Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). Pursuant to NRS 18.005, costs must be reasonable. Reasonable costs must be actual and reasonable not a reasonable estimate or calculation of such costs. Gibellini, 110 Nev. at 1206, 885 P.2d at 543." Bobby Berosini, A-19-791254-C PRINT DATE: 05/17/2021 Page 3 of 3 Minutes Date: April 15, 2021 Ltd. v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998). The decision to award attorney's fees is within the sound

discretion of the trial Court. Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) Defendant's expert report, in light of NRS 18.005, is reasonable under statute.

ORDER

Defendant's Motion for Attorney Fees is **DENIED** but Defendant's Motion for Costs is **GRANTED** in the amount of $930.69.

Dated this _____ day of June, 2021.

Dated this 28th day of July, 2021

HONORABLE JASMIN LILLY-SPELLS

E28 58E 32AB BCDF
Jasmin Lilly-Spells
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Janeen V. Isaacson

Janeen V. Isaacson, Esq. (Bar No.6429)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendant Green Valley Ranch South Owner's Association

Approved as to form and Content

ROGER P. CROTEAU & ASSOCATES

Christopher L. Benner

Roger P. Croteau, Esq. (Bar No. 4958)
Christopher L. Benner, Esq., (Bar No. 8963)
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff, Daisy Trust

Approved as to form and content

NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon E. Wood

Brandon E. Wood, Esq.
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
Attorneys for Nevada Association Services, Inc.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Renee Rittenhouse

From: Janeen Isaacson
Sent: Friday, June 11, 2021 1:36 PM
To: Renee Rittenhouse
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes - A-19-791254-C

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, June 11, 2021 1:36 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>; Susan Moses <susanm@nas-inc.com>
Subject: RE: FFCL Order on Motion for Attorney Fees and Costs - red lined changes - A-19-791254-C

Janeen,

You may use my electronic signature.

Due to the recent Nevada State Government directive, all visitors will be required to wear mask to enter our office front lobby. Our office is open during normal business hours Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available in front of our office during normal business hours and lunch. Should you want to meet with any team member to discuss your account please contact our office to make an appointment. Appointments are required.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

From: Janeen Isaacson [mailto:JIsaacson@lipsonneilson.com]
Sent: Friday, June 11, 2021 1:16 PM

To: Brandon Wood <brandon@nas-inc.com>; Susan Moses <susanm@nas-inc.com>
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Brandon and Susan,

Can you approve the language?

From: Janeen Isaacson
Sent: Wednesday, June 9, 2021 4:21 PM
To: Renee Rittenhouse <rrittenhouse@lipsonneilson.com>
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Please see below.

From: Janeen Isaacson
Sent: Wednesday, June 9, 2021 4:19 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; 'Chris Benner' <chris@croteaulaw.com>
Subject: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Roger and Chris,

Attached please see the proposed Order in the above referenced matter. Can you let me know if it's ok to submit to the Court.

Sincerely,

Lipson|Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

Renee Rittenhouse

From: Janeen Isaacson
Sent: Thursday, June 10, 2021 8:04 PM
To: Renee Rittenhouse
Subject: FW: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Follow Up Flag: Follow up
Flag Status: Flagged

Please submit to the Court tomorrow. Thanks.

From: Chris Benner <chris@croteaulaw.com>
Sent: Thursday, June 10, 2021 7:32 PM
To: Janeen Isaacson <JIsaacson@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Yes, please submit with my e-signature. Thank you.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

From: Janeen Isaacson <JIsaacson@lipsonneilson.com>
Sent: Wednesday, June 09, 2021 4:19 PM
To: Roger Croteau <rcroteau@croteaulaw.com>; Chris Benner <chris@croteaulaw.com>
Subject: FFCL Order on Motion for Attorney Fees and Costs - red lined changes

Roger and Chris,

Attached please see the proposed Order in the above referenced matter. Can you let me know if it's ok to submit to the Court.

Sincerely,

Lipson | Neilson

Janeen V. Isaacson, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jisaacson@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, COLORADO, ARIZONA & MICHIGAN

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Daisy Trust, Plaintiff(s) vs. Green Valley South Owners Association No. 1, Defendant(s)	CASE NO: A-19-791254-C DEPT. NO. Department 23

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/28/2021

J. William Ebert	bebert@lipsonneilson.com
Susana Nutt	snutt@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Brandon Wood	brandon@nas-inc.com
Roger Croteau	croteaulaw@croteaulaw.com
Susan Moses	susanm@nas-inc.com
Croteau Admin	receptionist@croteaulaw.com
Janeen Isaacson	JIsaacson@lipsonneilson.com
Christopher Benner	chris@croteaulaw.com