

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>DAISY TRUST, A NEVADA TRUST,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>SUNRISE RIDGE MASTER HOMEOWNERS ASSOCIATION; AND NEVADA ASSOCIATION SERVICES, INC., A NEVADA NON-PROFIT CORPORATION,</p> <p style="text-align: center;">Respondents.</p>	<p>No.: 83798</p> <p style="text-align: right;">Electronically Filed Dec 13 2021 02:46 p.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p style="text-align: center;">DOCKETING STATEMENT CIVIL APPEALS</p>
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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 file 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 properly 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 18

County Clark Judge Hon. Mary Kay Holthus

District Ct. Case No. A-19-790395-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; Jonathan K. Wong, Esq.

Telephone (702) 382-1500

Firm Lipson Nielson P.C.

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

Client(s) Sunrise Ridge Master Homeowner's Association ("HOA")

Attorney Brandon E. Wood, Esq.

Telephone (702) 804-8885

Firm In-House Counsel, Nevada Association Services, INC ("NAS")

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

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:

None.

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 real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116, which occurred on August 24 2012. The district court dismissed all claims against Defendants, with prejudice, pursuant to NRCP 12(b)(5).

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

Pursuant to NRS Chapter 116 and NRS 116.1113, does the HOA by and through its agent, NAS, owe a duty of good faith and candor in its conducting of the NRS Chapter 116 foreclosure sale, especially if the bidders at the sale have inquired, or attempted to inquire, as to any payments to the underlying lien? Specifically, are the HOA and NAS required to disclosed to interested bidders, upon inquiry by a bidder prior to the sale, that a portion of the lien being foreclosed upon has been partially satisfied prior to the sale, with inquiry from the bidders? If they do have

any obligation of good faith and candor in their dealings at the HOA Foreclosure Sale, does that obligation extend to NRS Chapter 116 foreclosure sale bidders and purchasers?

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:

- a) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 83477
- b) DAISY TR. VS. EL CAPITAN RANCH LANDSCAPE MAINT. ASS'N, 83404
- c) OLIVER SAGEBRUSH DR. TR. VS. NEV. ASS'N SERVS., INC, 83238
- d) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 82611
- e) SATICOY BAY LLC SERIES 6387 HAMILTON GROVE V. SUNRISE, 83669
- f) RIVER GLIDER VS. HARBOR COVE, 83689
- g) SATICOY BAY LLC SERIES 2920 BAYLINER AVE v. SANDSTONE, 83782

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? No

- ☐ 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: October 12, 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: October 12, 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: November 10, 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 Respondent's Motion to Dismiss alternatively Summary Judgment, which was granted pursuant to NRCP 12(b)(5).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff/Appellant: DAISY TRUST, A NEVADA TRUST

Defendant/Respondents: SUNRISE RIDGE MASTER HOMEOWNERS ASSOCIATION;

AND NEVADA ASSOCIATION SERVICES, INC., A NEVADA NON-PROFIT CORPORATION,

(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.

Appellant's Amended Complaint sought damages for (I) intentional and/or negligent misrepresentation, (II) breach of the duty of good faith under NRS 116.1113, (III) civil conspiracy, (IV) Violation of NRS Chapter 113 and (V) Unjust Enrichment. All claims were dismissed by Order granting the HOA's Motion to Dismiss (alternatively Motion for Summary judgment), and NAS' Joinder thereto, on October 12, 2021. No other claims by any other party were made.

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
Name of appellant

December 13, 2021
Date

Clark County, Nevada
State and county where signed

Christopher L. Benner
Name of counsel of record

/s/Christopher L. Benner, Esq
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on December 13, 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.)

BRANDON E. WOOD, ESQ.
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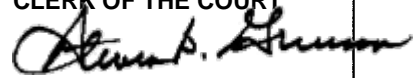
December 13, 2021,

/s/ Joe Koehle

An employee of Roger P. Croteau & Associates

EXHIBIT 1

EXHIBIT 1



1 **ACOM**
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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

19 vs.

20 SUNRISE RIDGE MASTER HOMEOWNERS
21 ASSOCIATION; and NEVADA
22 ASSOCIATION SERVICES, INC., a Nevada
23 non-profit corporation;
24
25 Defendants.

Case No.: A-19-790395-C

Dept No.: 18

FIRST AMENDED COMPLAINT

26 Plaintiff, DAISY TRUST, a Nevada trust ("**Plaintiff**"), by and through its attorneys, Roger
27 P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

28 **PARTIES AND JURISDICTION**

1. At all times relevant to this matter, Plaintiff was and is a Nevada trust, licensed to do
business and doing business in the County of Clark, State of Nevada.

2. Plaintiff is the current owner of real property located at 3883 Winter Whitetail Street,
Las Vegas, Nevada 89122 (APN 161-15-811-066) (the "**Property**").

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

12. In Nevada, when a homeowners' association properly forecloses upon a lien containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.

13. On or about January 25, 2005, Michael F. Delapaz and Carolyn T. Delapaz, husband and wife and Ludivina C. Catacutan, a single woman, as joint tenants (the "**Former Owners**") purchased the Property. Thereafter, the Former Owners obtained a loan for the Property from Bank of America, N.A., ("**Lender**"),¹ that was evidenced by a promissory note and secured by a deed of trust between the Former Owners and Lender, recorded against the Property on January 28, 2005, for the loan amount of \$220,864.00 (the "**Deed of Trust**"). The Deed of Trust provides Lender is beneficiary.

14. The Former Owners also executed a Planned Unit Development Rider along with the Deed of Trust.

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

¹ This term applies to the Lender and any assignees of the Deed of Trust.

1 16. On May 20, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Claim of
2 Delinquent Assessment Lien (the “**NODAL**”). The NODAL stated that the amount due to the HOA
3 was \$1,117.00, including late fees, collection fees and interest (the “**HOA Lien**”).

4 17. On July 13, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Default and
5 Election to Sell Under Homeowners Association Lien (the “**NOD**”). The NOD stated that the HOA
6 Lien amount was \$2,214.00.

7 18. On March 21, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of
8 Foreclosure Sale against the Property (“**NOS**”). The NOS stated that the total amount due the HOA
9 was \$4,648.67 and set a sale date for the Property of April 20, 2012 at 10:00 a.m., to be held at 930
10 South Fourth Street, Las Vegas, Nevada 89101.

11 19. On or about March 30, 2012, after the NOS was recorded, Lender, through counsel
12 Miles, Bauer, Bergstrom & Winters, LLP (“**Miles Bauer**”) contacted the HOA Trustee and HOA
13 via U.S. Mail and requested adequate proof of the super priority amount of assessments (“**Super-**
14 **Priority Lien Amount**”) by providing a breakdown of nine (9) months of common HOA
15 assessments in order for Lender to calculate the Super Priority Lien Amount, in an ostensible attempt
16 to determine the amount the HOA Lien entitled to super-priority.

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

19 21. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate
20 a response from the HOA and HOA Trustee to the “March 30, 2012, Miles Bauer letter to the HOA,
21 care of the HOA Trustee.”
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1 22. The Affidavit states that Miles Bauer used a Statement of Account from Nevada
2 Association Services, Inc., for a different property in the same HOA to determine a good faith
3 payoff.

4 23. On April 19, 2012, Lender, through Miles Bauer, provided a payment of \$378.00 to
5 the HOA Trustee, which included payment of up to nine months of delinquent assessments (the
6 “**Attempted Payment**”).

7 24. HOA Trustee, on behalf of the HOA, rejected Lender’s Attempted Payment of
8 \$378.00.

9 25. Despite Lender’s Attempted Payment, on August 24, 2012, HOA Trustee then
10 proceeded to conduct the non-judicial foreclosure sale on the Property and recorded the HOA
11 Foreclosure Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to
12 Plaintiff at the HOA Foreclosure Sale for the highest bid amount of \$5,470.00.

13 26. The Foreclosure Sale created excess proceeds.

14 27. The HOA Foreclosure Deed states that HOA Trustee “all requirement of law... have
15 been complied with.”

16 28. In none of the recorded documents, nor in any other notice recorded with the Clark
17 County Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
18 entity, including but not limited to the Lender, had attempted to pay any portion of the HOA Lien
19 in advance of the HOA Foreclosure Sale.

20 29. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders
21 at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
22 to pay the Super-Priority Lien Amount.

1 30. Upon information and belief, the debt owed to Lender by the Former Owners of the
2 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
3 value of the Property at the time of the HOA Foreclosure Sale.

4 31. Upon information and belief, Lender alleges that the Attempted Payment of the
5 Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount,
6 thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

7 32. Upon information and belief, Lender alleges that as a result of the Attempted
8 Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure
9 Sale acquired title to the Property subject to the Deed of Trust.

10 33. Upon information and belief, if the bidders and potential bidders at the HOA
11 Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority
12 Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
13 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and
14 potential bidders would not have bid on the Property.

15 34. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
16 would not have received payment, interest, fees, collection costs and assessments related to the
17 Property and these sums would have remained unpaid.

18 35. HOA Trustee acted as an agent of HOA.

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

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

3 38. The information related to any Attempted Payment or payments made by the Lender,
4 or others, to the Super-Priority Lien Amount, was not recorded and would only be known by the
5 Lender, the HOA, and HOA Trustee.
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7 39. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide
8 the aforementioned information for their own economic gain and to the detriment of the bidders and
9 potential bidders at the HOA Foreclosure Sale.

10 40. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
11 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
12 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter
13 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account.
14

15 41. At the time relevant to this matter, Plaintiff would call the number associated with
16 the HOA Trustee to make the inquiries which were part of Plaintiff's practice and procedure.
17

18 42. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to
19 determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening
20 bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any
21 payments had been made.

22 43. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
23 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
24 Foreclosure Sale.
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1 51. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral
2 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted
3 Payment of the Super-Priority Lien Amount by the Lender or any individual or entity.

4 52. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA
5 Foreclosure Sale believe that the HOA Lien included amounts entitled to superpriority over the
6 Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA
7 Foreclosure Sale for their own economic gain.

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

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

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

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

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

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

4 59. Plaintiff attended the sale as a ready, willing, and able buyer without knowledge of
5 the Attempted Payment.
6

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

10 61. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment
11 of the Super-Priority Lien Amount, and their subsequent intentional or grossly negligent failure to
12 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto,
13 Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby purchased the
14 Property.
15

16 62. HOA and HOA Trustee each profited from their intentional and/or negligent
17 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
18 refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
19

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

24 64. HOA and HOA Trustee solely possessed information related to the Attempted
25 Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale,
26 and they intentionally withheld such information for their own economic gain.
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1 65. Alternatively, HOA and HOA Trustee were grossly negligent when they withheld
2 information from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted
3 Payment of the Super-Priority Lien Amount.

4 66. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly
5 negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
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7 67. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA
8 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority
9 Lien Amount at the time of the HOA Sale and that their failure to disclose such information
10 promoted the sale of the Property.

11 68. HOA and HOA Trustee further intended that their failure of refusal to inform bidders
12 and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority
13 Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
14 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
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16 69. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
17 Super-Priority Lien Amount.
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19 70. The HOA and the HOA Trustee breached that duty to disclose the Attempted
20 Payment to Plaintiff.

21 71. As a result of the HOA and HOA Trustee's breach of their duties of care, honesty in
22 fact, good faith, and candor to bidders at the HOA Foreclosure Sale for their own economic gain,
23 Plaintiff has been economically damaged in many aspects.

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

3 73. As a direct and proximate result of the actions of Defendants, it has become necessary
4 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
5

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

8 **SECOND CLAIM FOR RELIEF**

9 (Breach of the Duty of Good Faith)

10 75. Plaintiff repeats and realleges each and every allegation contained above as if set
11 forth fully herein.

12 76. NRS 116.1113 provides that every contract or duty governed by NRS Chapter 116,
13 Nevada's version of the Uniform Common-Interest Ownership Uniform Act ("UCIOA"), must be
14 performed in good faith in its performance or enforcement.
15

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

17 78. Pursuant to the drafter's comments of the UCIOA, Section 1-113 of the UCIOA,
18 codified as NRS 116.1113, provides that:
19

20 **SECTION 1-113. OBLIGATION OF GOOD FAITH.** Every contract or duty
21 governed by this [act] imposes and obligation of good faith in its performance or
22 enforcement:

23 this section sets forth a basic principle running throughout this Act: in transactions
24 involving common interest communities, good faith is required in the performance
25 and enforcement of all agreements and duties. Good faith, as [used sic] in this Act,
26 means observance of two standards: "honesty in fact," and observance of reasonable
27 standards of fair dealing While the term is not defined, the term is derived from and
28 used in the same manner as in Section 1-201 of the Uniform Simplification of Land
Transfer Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

79. Prior to the HOA Foreclosure Sale of the Property, the Lender paid the Super-Priority
Lien Amount to HOA or HOA Trustee by the Attempted Payment.

1 97. Defendants were required, but failed, to complete and answer the questions posed in
2 the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures
3 (a) - (f), and Section 11, that provide as follows:

4 9. Common Interest Communities: Any "common areas" (facilities like pools, tennis
5 courts, walkways or other areas co-owned with others) or a homeowner association
6 which has any authority over the property?

7 (a) Common Interest Community Declaration and Bylaws available?

8 (b) Any periodic or recurring association fees?

9 (c) Any unpaid assessments, fines or liens, and any warnings or notices
10 that may give rise to an assessment, fine or lien?

11 (d) Any litigation, arbitration, or mediation related to property or
12 common areas?

13 (e) Any assessments associated with the property (excluding property
14 tax)?

15 (f) Any construction, modification, alterations, or repairs made without
16 required approval from the appropriate Common Interest Community
17 board or committee?

18 ...

19 11. Any other conditions or aspects of the property which materially affect its value
20 or use in an adverse manner? (Emphasis added)

21 See SRPDF, Form 547, attached hereto as Ex. 1.

22 98. Section 11 of the SRPDF relates directly to information known to Defendants that
23 materially affects the value of the Property, and in this case, if the Super-Priority Lien Amount is
24 paid, or if the Attempted Payment is rejected/accepted, it would have a material, adverse effect on
25 the overall value of the Property, and therefore, must be disclosed to the Purchaser in the SRPDF
26 by Defendants.

27 99. Defendants' response to Section 9(c) - (e) of the SRPDF would have provided notice
28 to Plaintiff of any payments made by Lender, Former Owner, or others on the HOA Lien.

100. Defendants' response to Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and the Attempted Payment that would only be known by Defendants.

101. Nevada Real Estate Division's ("**NRED**"), Residential Disclosure Guide (the "**Guide**"), Ex. 2, provides at page 20 that Defendants shall provide, even in an NRS Chapter 107 foreclosure sale, the following to the purchaser/Plaintiff 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

102. If Defendants fail 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).

103. Pursuant to NRS 113.130, Defendants were required, but failed, to provide the information set forth in the SRPDF to Plaintiff at the HOA Foreclosure Sale.

104. Defendants did not provide an SRPDF to Plaintiff prior to, or at, the HOA Foreclosure Sale.

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

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

(Unjust Enrichment)

108. Plaintiff repeats and realleges each and every allegation contained above as if set forth fully herein.

109. Plaintiff has conferred benefits on Defendants in the form of, but not limited to, the payment of the HOA Lien.

110. The HOA and HOA Trustee are believed to retain the payment of the HOA Lien, and any excess proceeds obtained from the HOA Sale, and have not distributed those proceeds to any Defendant or third party.

111. Defendants have appreciated the foregoing benefits and has retained those benefits under inequitable circumstances.

112. If Defendants retain the foregoing benefits, Plaintiff has been economically damaged.

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

114. 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 14th day of June, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/Joe Koehle

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

DECLARATION OF IYAD HADDAD

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

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

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

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

ROGER P. CROTEAU & ASSOCIATES, LTD.

• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 As part of my practice and procedure in both NRS 107 and NRS 116 foreclosure sales, I
2 would call the foreclosing agent/HOA Trustee and confirm whether the sale was going forward on
3 the scheduled date; and in the context of an NRS 116 foreclosure sale, I would ask if anyone had
4 paid anything on the account. I would contact the office of the foreclosing agent/HOA Trustee; I
5 would ask the relevant questions to the employee who answered the phone with the understanding
6 that an employee who answered for the foreclosing agent/HOA Trustee would be able to answer my
7 questions, or direct me to another, appropriate, employee.
8

9 I would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the
10 Property would in fact be sold on the date stated in the Notice of Sale, obtain the opening bid, so I
11 could determine the amount of funds necessary for the auction and inquire if any payments had been
12 made; however, I never inquired if the "Super Priority Lien Amount" had been paid. I would
13 reasonably rely on the information provided by employee representatives of the foreclosing
14 agent/HOA Trustee who was charged with responding to my inquiries. I personally do all of the
15 research on any and all properties that I purchased at the HOA Foreclosure Sales.
16

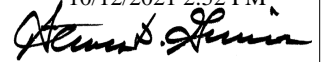
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 14 day of June, 2021.

19
20
21 
22 EDDIE HADDAD
23
24
25
26
27
28

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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JONATHAN K. WONG, ESQ.
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bebert@lipsonneilson.com
jwong@lipsonneilson.com

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;
Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

Hearing Date: September 1, 2021
Hearing Time: 10:00 a.m.

On September 1, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Chris L. Benner, Esq., appeared on behalf of Plaintiff, Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"), and Brandon E. Wood, Esq., appeared on behalf of defendant Nevada Association Services, Inc. ("NAS"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

FINDINGS OF FACT

1. On or about January 25, 2005, Michael Delapaz, Carolyn Delapaz, and Ludivina Catacutan (the "Former Owners") obtained a loan to purchase real property located at 3883 Winter Whitetail Ave., Las Vegas, Nevada 89122 (the "Property").

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

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

4. On May 20, 2010, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On July 13, 2010, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. On or around March 21, 2012, Sunrise Ridge, through NAS, recorded a Notice of Sale.

7. On or around March 30, 2012, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

8. On April 19, 2012, Miles Bauer sent NAS supplemental correspondence, wherein it offered to pay \$378.00 to discharge Sunrise Ridge's superpriority lien on the Property.

9. On or around August 24, 2012, Sunrise Ridge, through NAS, foreclosed on the Property. A foreclosure deed in favor of Daisy Trust was recorded on August 30, 2012.

10. On March 3, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Daisy Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-00467-MMD-CWH ("Federal Action"). The complaint alleged causes of action for

1 Quiet Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and
2 Injunctive Relief.

3 11. On January 22, 2019, Sunrise Ridge, Daisy Trust, and BANA filed
4 competing motions for summary judgment. On March 1, 2019, while dispositive motions
5 remained pending in the Federal Action, Daisy Trust filed the instant lawsuit against
6 Sunrise Ridge and NAS alleging causes of action for Intentional/Negligent
7 Misrepresentation, Breach of NRS 116, and Conspiracy.

8 12. On March 18, 2019, the district court in the Federal Action issued an
9 order granting summary judgment in BANA's favor on its cause of action for quiet title,
10 as well as Daisy Trust's counterclaims. The district court denied summary judgment on
11 BANA's claims against Sunrise Ridge for Breach of NRS 116 and Wrongful
12 Foreclosure.

13 13. On March 1, 2019, Plaintiff filed a complaint in the instant matter, alleging
14 causes of action for 1) Intentional/Negligent Misrepresentation; 2) Breach of the Duty of
15 Good Faith; and 3) Conspiracy. Sunrise Ridge filed a Motion to Dismiss, or
16 Alternatively, Motion for Summary Judgment (the "MTD/MSJ") on April 9, 2019. The
17 MTD/MSJ was ultimately heard on July 1, 2020. This Court denied the MTD/MSJ and
18 allowed Plaintiff leave to file an amended complaint, but specifically ordered that it
19 would not allow addition of a claim for Violation of NRS 113. A formal order was
20 entered on October 14, 2020.

21 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
22 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
23 116.1113; 3) Conspiracy; 4) Violation of NRS 113 (subsequently withdrawn by Plaintiff);
24 and 5) Unjust Enrichment.

25 15. Any finding of fact that should be a conclusion of law shall be treated as
26 such.

27 ///

28 ///

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs") may impose assessments. See NRS 116.3115.

4. NRS 116 establishes that HOAs have a lien against units for assessments. See generally NRS 116.3116.

5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale, neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders the existence of payments or attempted payments on the HOA's lien.

7. Under Nevada law, intentional misrepresentation requires three elements: "(1) a false representation that is made with either knowledge or belief that it is false or without a sufficient foundation, (2) an intent to induce another's reliance, and (3) damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law requires a plaintiff to show that the defendant is "one who, without exercising reasonable care or competence, 'supplies false information for the guidance of others in their business transactions' is liable for 'pecuniary loss caused to them by their justifiable reliance upon the information.'" *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

1 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
2 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
3 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
4 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
5 "neither made an affirmative false statement nor omitted a material fact it was bound to
6 disclose.").

7 9. As such, the only way a misrepresentation could have been made would
8 be for Plaintiff to have specifically inquired about whether payment was made on the
9 HOA's lien, and in response be advised specifically that no such payments had been
10 made.

11 Here, Plaintiff does not allege that Defendants made any active
12 misrepresentation; rather, he alleges only that Defendants are guilty of a material
13 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
14 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

15 10. Because there was no misrepresentation – neither intentional nor
16 negligent – Plaintiff’s remaining causes of action necessarily fail to state claims upon
17 which relief can be granted.

ORDER


19 In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion and NAS's Joinder are GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's First Amended Complaint is dismissed with prejudice and judgment entered thereon. Because this Court is granting relief pursuant to NRCP 12(b)(5), it does not

24 || *///*25 || *///*26 || *///*27 || *III*28 || *///*

reach or address any of the parties' arguments relating to NRCP 56, including Plaintiff's request for NRCP 56(d) relief.

Dated this 12th day of October, 2021



DISTRICT COURT JUDGE

E78 D5A 4E2D 4282
Mary Kay Holthus
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
*Attorneys for Defendant Sunrise Ridge Master
Homeowner's Association*

Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher Benner

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRIS L. BENNER, ESQ.
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2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon Wood

BRANDON E. WOOD, ESQ.
Nevada Bar No. 12900
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
Attorney for Defendant Nevada Association Services, Inc.

Juan Cerezo

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, September 22, 2021 4:38 PM
To: Jonathan Wong; 'Brandon Wood'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my e-signature.

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

The information contained in this email message is intended for the personal and confidential use of the intended recipient(s) only. This message may be an attorney/client communication and therefore privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any review, use, dissemination, forwarding, or copying of this message is strictly prohibited. If you have received this message in error, please notify us immediately by reply email or telephone and delete the original message and any attachments from your system. Please note that nothing in the accompanying communication is intended to qualify as an "electronic signature."

From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Wednesday, September 22, 2021 4:23 PM
To: Chris Benner <chris@croteaulaw.com>; 'Brandon Wood' <brandon@nas-inc.com>
Subject: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

Counsel,

Attached is a proposed order granting the HOA's MTD and NAS's Joinder. Please confirm I have your authority to use your electronic signatures in submission to the court. Thanks.

Jonathan K. Wong, 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: jwong@lipsonneilson.com
Website: www.lipsonneilson.com

Juan Cerezo

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 24, 2021 9:30 AM
To: Jonathan Wong; 'Chris Benner'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my electronic signature.

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

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Wednesday, September 22, 2021 4:23 PM
To: 'Chris Benner' <chris@croteaulaw.com>; Brandon Wood <brandon@nas-inc.com>
Subject: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

Counsel,

Attached is a proposed order granting the HOA's MTD and NAS's Joinder. Please confirm I have your authority to use your electronic signatures in submission to the court. Thanks.

Jonathan K. Wong, 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: jwong@lipsonneilson.com

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-790395-C

7 vs.

DEPT. NO. Department 18

8 Sunrise Ridge Master
9 Homeowners Association,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

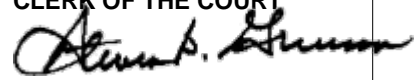
15 Service Date: 10/12/2021

16 Susana Nutt	snutt@lipsonneilson.com
17 Brandon Wood	brandon@nas-inc.com
18 Roger Croteau	croteaulaw@croteaulaw.com
19 Susan Moses	susanm@nas-inc.com
20 Croteau Admin	receptionist@croteaulaw.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
22 Jonathan Wong	jwong@lipsonneilson.com
23 Juan Cerezo	jcerezo@lipsonneilson.com

24
25
26
27
28

EXHIBIT 3

EXHIBIT 3



LIPSON NEILSON P.C.
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JONATHAN K. WONG, ESQ.
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bebert@lipsonneilson.com
jwong@lipsonneilson.com

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT SUNRISE
RIDGE MASTER HOMEOWNERS'
ASSOCIATION'S MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

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1 TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on the 12th day of October, 2021, an Order
3 Granting Defendant Sunrise Ridge Master Homeowners Association's Motion to
4 Dismiss, or Alternatively, Motion for Summary Judgment, and Defendant Nevada
5 Association Services' Joinder Thereto was entered in the above-captioned matter, a
6 true and correct copy of which is attached hereto as **Exhibit A**.

7 DATED this 12th day of October, 2021.

8 LIPSON NEILSON P.C.

9 /s/ Jonathan K. Wong

10 By:

11 J. William Ebert, Esq. (Bar No. 2697)
Jonathan K. Wong, Esq. (Bar No. 13621)
12 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

13 *Attorneys for Defendant,*
14 *Sunrise Ridge Master Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 12th day of October, 2021, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT, AND DEFENDANT NEVADA ASSOCIATION SERVICES' JOINER THERETO** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.
Chris Benner, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, NV 89148
croteaulaw@croteaulaw.com

*Attorneys for Plaintiff,
Daisy Trust*

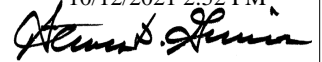
Brandon Wood, Esq.
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Las Vegas, Nevada 89118
brandon@nas-inc.com

Attorney for Defendant Nevada Association Services, Inc.

/s/ Juan Cerezo
An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

LIPSON NEILSON P.C.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

Hearing Date: September 1, 2021
Hearing Time: 10:00 a.m.

On September 1, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Chris L. Benner, Esq., appeared on behalf of Plaintiff, Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"), and Brandon E. Wood, Esq., appeared on behalf of defendant Nevada Association Services, Inc. ("NAS"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

FINDINGS OF FACT

1. On or about January 25, 2005, Michael Delapaz, Carolyn Delapaz, and Ludivina Catacutan (the "Former Owners") obtained a loan to purchase real property located at 3883 Winter Whitetail Ave., Las Vegas, Nevada 89122 (the "Property").

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

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

4. On May 20, 2010, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On July 13, 2010, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. On or around March 21, 2012, Sunrise Ridge, through NAS, recorded a Notice of Sale.

7. On or around March 30, 2012, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

8. On April 19, 2012, Miles Bauer sent NAS supplemental correspondence, wherein it offered to pay \$378.00 to discharge Sunrise Ridge's superpriority lien on the Property.

9. On or around August 24, 2012, Sunrise Ridge, through NAS, foreclosed on the Property. A foreclosure deed in favor of Daisy Trust was recorded on August 30, 2012.

10. On March 3, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Daisy Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-00467-MMD-CWH ("Federal Action"). The complaint alleged causes of action for

1 Quiet Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and
2 Injunctive Relief.

3 11. On January 22, 2019, Sunrise Ridge, Daisy Trust, and BANA filed
4 competing motions for summary judgment. On March 1, 2019, while dispositive motions
5 remained pending in the Federal Action, Daisy Trust filed the instant lawsuit against
6 Sunrise Ridge and NAS alleging causes of action for Intentional/Negligent
7 Misrepresentation, Breach of NRS 116, and Conspiracy.

8 12. On March 18, 2019, the district court in the Federal Action issued an
9 order granting summary judgment in BANA's favor on its cause of action for quiet title,
10 as well as Daisy Trust's counterclaims. The district court denied summary judgment on
11 BANA's claims against Sunrise Ridge for Breach of NRS 116 and Wrongful
12 Foreclosure.

13 13. On March 1, 2019, Plaintiff filed a complaint in the instant matter, alleging
14 causes of action for 1) Intentional/Negligent Misrepresentation; 2) Breach of the Duty of
15 Good Faith; and 3) Conspiracy. Sunrise Ridge filed a Motion to Dismiss, or
16 Alternatively, Motion for Summary Judgment (the "MTD/MSJ") on April 9, 2019. The
17 MTD/MSJ was ultimately heard on July 1, 2020. This Court denied the MTD/MSJ and
18 allowed Plaintiff leave to file an amended complaint, but specifically ordered that it
19 would not allow addition of a claim for Violation of NRS 113. A formal order was
20 entered on October 14, 2020.

21 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
22 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
23 116.1113; 3) Conspiracy; 4) Violation of NRS 113 (subsequently withdrawn by Plaintiff);
24 and 5) Unjust Enrichment.

25 15. Any finding of fact that should be a conclusion of law shall be treated as
26 such.

27 ///

28 ///

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs") may impose assessments. See NRS 116.3115.

4. NRS 116 establishes that HOAs have a lien against units for assessments. See generally NRS 116.3116.

5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale, neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders the existence of payments or attempted payments on the HOA's lien.

7. Under Nevada law, intentional misrepresentation requires three elements: "(1) a false representation that is made with either knowledge or belief that it is false or without a sufficient foundation, (2) an intent to induce another's reliance, and (3) damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law requires a plaintiff to show that the defendant is "one who, without exercising reasonable care or competence, 'supplies false information for the guidance of others in their business transactions' is liable for 'pecuniary loss caused to them by their justifiable reliance upon the information.'" *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

1 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
2 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
3 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
4 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
5 "neither made an affirmative false statement nor omitted a material fact it was bound to
6 disclose.").

7 9. As such, the only way a misrepresentation could have been made would
8 be for Plaintiff to have specifically inquired about whether payment was made on the
9 HOA's lien, and in response be advised specifically that no such payments had been
10 made.

11 Here, Plaintiff does not allege that Defendants made any active
12 misrepresentation; rather, he alleges only that Defendants are guilty of a material
13 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
14 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

15 10. Because there was no misrepresentation – neither intentional nor
16 negligent – Plaintiff’s remaining causes of action necessarily fail to state claims upon
17 which relief can be granted.

ORDER


19 In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion and NAS's Joinder are GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's First Amended Complaint is dismissed with prejudice and judgment entered thereon. Because this Court is granting relief pursuant to NRCP 12(b)(5), it does not

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reach or address any of the parties' arguments relating to NRCP 56, including Plaintiff's request for NRCP 56(d) relief.

Dated this 12th day of October, 2021



DISTRICT COURT JUDGE

E78 D5A 4E2D 4282
Mary Kay Holthus
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
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Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher Benner

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NEVADA ASSOCIATION SERVICES, INC.

/s/ Brandon Wood

BRANDON E. WOOD, ESQ.
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Attorney for Defendant Nevada Association Services, Inc.

Juan Cerezo

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, September 22, 2021 4:38 PM
To: Jonathan Wong; 'Brandon Wood'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my e-signature.

Christopher L. Benner, Esq.
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From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Wednesday, September 22, 2021 4:23 PM
To: Chris Benner <chris@croteaulaw.com>; 'Brandon Wood' <brandon@nas-inc.com>
Subject: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

Counsel,

Attached is a proposed order granting the HOA's MTD and NAS's Joinder. Please confirm I have your authority to use your electronic signatures in submission to the court. Thanks.

Jonathan K. Wong, Esq.
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E-Mail: jwong@lipsonneilson.com
Website: www.lipsonneilson.com

Juan Cerezo

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 24, 2021 9:30 AM
To: Jonathan Wong; 'Chris Benner'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my electronic signature.

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

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

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Subject: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-790395-C

7 vs.

DEPT. NO. Department 18

8 Sunrise Ridge Master
9 Homeowners Association,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/12/2021

16 Susana Nutt	snutt@lipsonneilson.com
17 Brandon Wood	brandon@nas-inc.com
18 Roger Croteau	croteaulaw@croteaulaw.com
19 Susan Moses	susanm@nas-inc.com
20 Croteau Admin	receptionist@croteaulaw.com
21 Sydney Ochoa	sochoa@lipsonneilson.com
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